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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Case No. 10-13779-alg

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In the Matter of:

JENNIFER CONVERTIBLES, INC., et al.,

Debtors.

- - - - -x

U.S. Bankruptcy Court  
One Bowling Green  
New York, New York

January 25, 2011  
11:03 a.m.

B E F O R E:  
HON. ALLAN L. GROPPER  
U.S. BANKRUPTCY JUDGE

1  
2 Initial Case Conference.

3  
4 Motion Filed by Debtors for Authority to Enter Into Amended  
5 Nonresidential Real Property Leases and to Assume Amended  
6 Nonresidential Real Property Leases Effective as of the  
7 Effective Date of a Chapter 11 Plan of Reorganization.

8  
9 Objection Filed by Federal Realty Investment Trust to Debtors'  
10 Cure Schedule for Assumed Executory Contracts and Unexpired  
11 Leases Relating to the Amended Joint Plan of Reorganization of  
12 Jennifer Convertibles, Inc.

13  
14 Debtors' Omnibus Objection to Claims(s) Number: 63, 142, 314,  
15 315, 35, 56, 139, 185, 331, 333, 68, 94, 294, 350, 3, 30, 10,  
16 156, 256, 292, 318, 324, 325, 165, 194, 166, 195, 49, 178, 275,  
17 276, 2, 6, 313, 337, 48, 107, 167, 184, 7, 4, 57, 171, 340, 75,  
18 69, 135, 192 to Certain Duplicate Claims.

19  
20 Response of 376 Boylston Street Realty Trust's in Opposition to  
21 Debtors' Omnibus Objection to Certain Duplicate Claims.

Motion Filed by Debtors for Approval to Assume Leases or  
Executory Contracts With Licensor, Effective as of the  
Effective Date of a Plan of Reorganization.

Transcribed by: Esther Accardi

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A P P E A R A N C E S : (continued)

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A P P E A R A N C E S : (continued)

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APPEARING TELEPHONICALLY:

JULIA OSBORNE, BMC GROUP

ALAN HARRIS, ESQ., HARRIS & RUBLE

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P R O C E E D I N G S

THE COURT: Please be seated. All right, Jennifer Convertibles.

Do we have somebody on the phone? Is the phone line open?

MR. HARRIS: Yes, Your Honor.

THE COURT: All right.

MR. HARRIS: This is Alan Harris. I represent the claimant; Combs, in the class action.

THE COURT: All right. Let me take appearances from those in the courtroom.

MR. FOX: Good morning, Judge. Michael Fox, Jordanna Nadritch and Jayme Bethel, representing Jennifer Convertibles, et al.

MR. CARR: Good morning, Your Honor. Jim Carr of Kelley Drye & Warren, and with me is Jason Adams of Kelley Drye & Warren on behalf of the unsecured creditors' committee.

MR. NEIGER: Good morning, Your Honor. Edward Neiger of Neiger LLP on behalf of Haining Mengnu Group Co. Ltd. Good morning, Your Honor.

MR. GOLDSTEIN: Good morning, Your Honor. Michael Goldstein, Rachel Ehrlich Albanese, Greenberg Traurig, here on behalf of Ashley HomeStores and Ashley Furniture.

MS. POLLACK: Good morning, Your Honor. Bonnie Pollack, Cullen and Dykman for TMCC.

1 MR. TOUITOU: Your Honor, Phil Touitou, Hinshaw  
2 Culbertson for creditor; 376 Boylston Street.

3 THE COURT: Anyone else wish to appear or expect to  
4 speak?

5 All right, I have one person on the phone. Anyone  
6 else on the telephone?

7 MS. OSBORNE: Yes, Your Honor. This is Julia Osborne  
8 from BMC Group. I'm with the claims and balloting agent for  
9 the debtors.

10 THE COURT: All right, anyone else?

11 All right, Mr. Fox, please go ahead. Where should we  
12 start?

13 MR. FOX: I always like to say, Your Honor, good  
14 morning and it's a pleasure to be here. I hope that today is a  
15 start and a finish. But I think for ease of the record, what I  
16 prefer to do as I have in the past, I think we should probably  
17 go through the uncontested matters, then perhaps one of the  
18 people on the phone would be able to excuse themselves and then  
19 we can deal with, you know, the two motions that are probably  
20 more complicated. One being confirmation and the other being  
21 the assumption of the Ashley TUA.

22 So having said that what I think on the calendar are  
23 the motion to assume the modified leases, the Comb settlement,  
24 and the claims objection.

25 THE COURT: All right.



1 MR. FOX: I think those are the three that are either  
2 uncontested or there's just been one response, which I think is  
3 very easy to address.

4 THE COURT: All right, please go ahead.

5 MR. FOX: Just so we can go, I would take them in the  
6 order of the Combs settlement. This way Mr. Harris, who's on  
7 the phone, to the extent that is approved, it would be up to  
8 him, he could excuse himself.

9 THE COURT: All right.

10 MR. FOX: Well, Your Honor, the Combs -- I'm calling  
11 it the Combs' motion because Ms. Combs was -- Ayesha (ph.)  
12 Combs was a lead class action claimant in a law suit that was  
13 commenced against the debtor and against the debtors'  
14 officer -- certain of the debtors' officers pre-petition.

15 And as we have seen fit to do in just about everything  
16 that's happened in this case, once people actually sit and have  
17 an open dialogue we try to see if there's a resolution.

18 They had filed a few proof of claims in this estate  
19 totaling in excess of eight million dollars. Through  
20 negotiations between and amongst the debtor, Mengnu, and the  
21 creditors' committee, and Mr. Harris on behalf of his client,  
22 we've come up with a resolution that we think addresses some of  
23 the needs that is in the best interest of the estate to enter  
24 into. So we noticed a 9019, there's been no objections.

25 What the sum and substance of the settlement we

1 propose is a payment of 50,000 dollars upon confirmation of the  
2 case. An allowed claim -- a general unsecured class 3 claim of  
3 450,000 dollars which is much, much, much, much lower than the  
4 7.6 or 8 million dollar claim that Mr. Harris and his client  
5 would have. And there are certain --

6 THE COURT: Are claiming. Are claiming --

7 MR. FOX: Are claiming to have, you're right.

8 And there's always the idea of settlement, Your Honor.  
9 And this in our -- the debtors' opinion meets the lowest level  
10 of reasonableness under 9019. And we have nego -- this has  
11 been a hotly contested, hotly negotiated settlement between and  
12 amongst the parties I've done, and including Mr. Harris on  
13 behalf of his clients.

14 So this is something that is not a big payment up  
15 front to him and he will -- his client will share pari passu as  
16 a class 3 creditor. There are some other mechanisms that we  
17 have to go through this court, some procedures just to make  
18 sure that the class is certified, but I don't think that for  
19 purposes of the settlement today and the 9019 that we need to  
20 argue that.

21 THE COURT: Does anyone wish to be heard?

22 All right, I've reviewed the settlement papers, I have  
23 a couple of questions.

24 One is this is set up as a what we call a class action  
25 settlement, as I understand it. I suppose in the California

1 form, is that right, Mr. Harris?

2 MR. HARRIS: Correct, Your Honor. The California form  
3 is no really different than it is in New York or anywhere else.

4 THE COURT: All right. Well, it's a little different  
5 in bankruptcy court because you have a claim and you're giving  
6 parties the right to exclude themselves from the class. But  
7 the only party who's filed a proof of claim is the class  
8 plaintiff. So I'm not at all sure that anybody else is going  
9 to have a claim. But I don't need to decide that.

10 I think you ought to put a sentence in your settlement  
11 papers, though, or perhaps more than -- just blackline it and  
12 underline it and say "Nothing herein determines whether or not  
13 someone who excludes himself or herself from the class has a  
14 claim, because the deadline for filing claims is past."

15 Now, I don't know what the effect of this would be,  
16 but I would think that that's an issue that we ought to  
17 reserve. I don't know that anybody's going to exclude  
18 themselves from the class, I think they'd have to be out of  
19 their minds. But that, perhaps -- I should withdraw that  
20 comment. And I should play the role of a class action judge.  
21 And I do, and I make no comment at this point on the merits of  
22 the settlement.

23 Is that reasonable?

24 MR. HARRIS: Yes, Your Honor. We will include that in  
25 the notice.

1 THE COURT: I would think that's got to be noticed.

2 The other part of this that hit my attention was the  
3 immediate payment of 50,000 dollars to the individual named  
4 plaintiff.

5 Now, Mr. Harris, is that standard operating procedure  
6 in class actions in California today?

7 MR. HARRIS: No, it happens in certain cases where --  
8 as in this one, where the plaintiff has the claims, not only  
9 against the company but also against the corporate officers,  
10 and has incurred substantial out-of-pocket expenses that she  
11 has already indicated. So I think under the circumstances of  
12 this case this is a normal and acceptable procedure. Which we  
13 have negotiated to prevent the merits to be closed.

14 THE COURT: And these types of payments, if are deemed  
15 appropriate, in class action settlements in California?

16 MR. HARRIS: Yes, Your Honor. When they're disclosed  
17 as they are in this case. The disclosure of the case stature.

18 THE COURT: Now, they are disclosed but I don't know  
19 what happens to the 50,000 dollars in the event the class  
20 action settlement is not approved. Because I gather that  
21 payment is made up front, is that right?

22 MR. HARRIS: Yes, Your Honor. This is on account of  
23 separate claims against the company and against the corporate  
24 officers. And in the event they do not have final approval  
25 this payment will have been made but that her claim will be

1 effectively approved and resolved as of today, and she will  
2 have no further claims. So if the class action is not  
3 approved, she will not have any further claims against the  
4 company or the officers, but she will retain the benefit of the  
5 initial payment.

6 THE COURT: And you're representing that the amount  
7 bears a reasonable relationship to her actual personal damages?

8 MR. HARRIS: Yes, Your Honor.

9 THE COURT: All right. Well, I'm taking each of what  
10 you have said as a representation by an attorney with knowledge  
11 of the facts. And if no one wishes to be heard I'll approve  
12 the settlement, but on that basis.

13 Because while this is a bankruptcy court and we,  
14 certainly, make determinations with regard to state law  
15 frequently I do not purport to be an expert on class action  
16 settlements either in California or in New York. My direct  
17 experience being, perhaps, twenty plus years old, which is  
18 ancient history to most of the people in this room.

19 All right, then I'll approve -- does anyone wish to be  
20 heard?

21 All right, I'll approve the settlement subject to the  
22 additional notice that there's no certainty that anyone who  
23 excludes himself or herself from the class, in fact, will have  
24 a claim because of the claims bar date.

25 MR. HARRIS: Yes, Your Honor.

1           MR. FOX: Your Honor, I'd like to thank Your Honor for  
2 this.

3           THE COURT: All right.

4           MR. FOX: I did a lot of learning as best I could on  
5 the class actions, to try to at least understand some of the  
6 issues, and --

7           THE COURT: I hope you're not going to change your  
8 specialty, though.

9           MR. FOX: No, I don't intend to, Your Honor.

10          THE COURT: All right.

11          MR. FOX: I hope that there will be no more class  
12 actions in my life, to tell you the truth.

13          MR. HARRIS: Thank you, Your Honor. And if I may  
14 excuse myself?

15          THE COURT: All right. I wish I could, but you  
16 certainly may.

17          MR. HARRIS: Thank you, Your Honor.

18          MR. FOX: Thank you, Mr. Harris.

19                 The other matter that's -- I guess it's slightly  
20 contested, I don't think it was material, was a duplicate  
21 claims motion that was filed. I think we got one response from  
22 one of the creditors that's here today. But for the most part,  
23 what it did, Your Honor, was seek to expunge the duplicate  
24 claims that were filed. That's all it sought to do.

25          THE COURT: Does the order -- is the party who did

1 file a response here?

2 MR. TOUITOU: I am, Your Honor.

3 THE COURT: Does the order make it clear that you  
4 retain whatever claim you wish to retain?

5 MR. TOUITOU: Yeah, I believe it does make that clear.

6 THE COURT: All right. So does anyone wish to be  
7 heard, then, with regard to the order as revised?

8 All right, then, the claims will be expunged and  
9 adjusted as requested subject to a clarification with regard to  
10 the claim of 376 Boylston Street Realty.

11 All right.

12 MR. FOX: And for the last uncontested motion; which  
13 is the motion to assume some modified leases, I will cede the  
14 podium to Ms. Jordanna Nadritch.

15 THE COURT: All right.

16 MS. NADRITCH: Good morning, Your Honor. The motion  
17 that I have before me is a motion to assume modified leases  
18 seeking authority to enter into the amended real property  
19 leases, as well as to assume the leases upon an effective date  
20 of a plan of reorganization.

21 The terms of the amended leases have not been shared  
22 with the Court due to confidentiality issues, but they have  
23 been provided, both to counsel for the committee and counsel to  
24 Mengnu, and neither have had any objections.

25 This motion is uncontested. While there was a limited

1 objection initially filed by one of the landlords there was  
2 some confusion. And after subsequent discussions with that  
3 counsel they have withdrawn that objection.

4 We've also filed a revised amended exhibit, and have  
5 further amended that exhibit as of this morning, even to  
6 account for further lease modifications that have been agreed  
7 to, specifically with TMCC, who's in court today.

8 As you know, Your Honor, throughout the Chapter 11  
9 cases, the debtors have been diligently crafting a  
10 comprehensive reorganization strategy and plan. And a  
11 significant part of that has been their ability to negotiate  
12 more favorable terms -- lease terms, rather, with their  
13 landlords.

14 In furtherance of this effort the debtors, in  
15 conjunction with KPMG and on their own, as well, have engaged  
16 in arm's length negotiations with many of the counterparties to  
17 various leases, and are to modify the terms for the go-forward  
18 store locations.

19 The modification agreements, or the list of leases to  
20 be modified on Exhibit A, are the product of these  
21 negotiations. And assumption of these modifications will  
22 significantly benefit the debtors, their creditors and their  
23 estates going forward.

24 More specifically, Your Honor, KPMG has negotiated  
25 fifty-five lease modifications that are fully executed, another



1 four that landlord is countersigning today, I believe. Out of  
2 those lease modifications that benefits to the estate on a go-  
3 forward basis, there's a present value savings go-forward of  
4 rent of 7.1 million dollars. There are landlords that have  
5 waived approximately 1.8 of pre-petition arrearages.

6 In addition, the debtors, themselves, had negotiated  
7 approximately fifteen additional leases that have an aggregate  
8 saving of 2.7 million. Broken down I believe to be 2.9 on a  
9 go-forward savings -- a present value savings, that is. And  
10 about 900 of pre-petition waivers.

11 So as you can see, Your Honor, there's been a  
12 significant benefit to the estate, both on a pre-petition  
13 unsecured basis and on a go-forward ability to operate their  
14 business successfully through their leases.

15 Your Honor, the lease obligations agreement are  
16 conditioned upon approval of this Court's motion. So if we  
17 seek approval of them today, as well as we also seek contingent  
18 upon confirmation of plan that they be approved so we may get a  
19 confirmed plan today.

20 THE COURT: Or that you have a confirmed plan in the  
21 near future.

22 MS. NADRITCH: And in the near future, correct.

23 THE COURT: All right. Does anyone wish to be heard?

24 MS. POLLACK: Briefly, Your Honor, thank you.

25 Bonnie Pollack, Cullen and Dykman for TMCC.

1           The modification with TMCC was on an earlier exhibit  
2           that was filed with the Court. But the name of the landlord  
3           was incorrect on that exhibit, so it was previously submitted  
4           to the Court.

5           I would like to say that the agenda shows TMCC's  
6           motion seeking payments under 365(d)(3) as being resolved and  
7           marked off as a result of this motion. And that is correct.  
8           Except, Your Honor, to the extent that the plan is not  
9           confirmed --

10          THE COURT: Obviously.

11          MS. POLLACK: -- then I would keep the motion on the  
12          calendar for further hearing. Thank you, Your Honor.

13          MR. CARR: Good morning, Your Honor. Jim Carr of  
14          Kelley Drye & Warren on behalf of the official committee of  
15          unsecured creditors.

16          Your Honor, we received from the debtors' financial  
17          advisors the financial effect of the modifications of the  
18          leases. And as indicated to Your Honor they are substantial.  
19          And in connection with the retail case, Your Honor, there's two  
20          ways to make the company more successful as it emerges from  
21          bankruptcy.

22          One is to increase revenue, or the other is to  
23          decrease the expenses. And Mr. Bordwin (ph.) has done a  
24          tremendous job in connection with decreasing the expenses at  
25          all these locations, and the committee fully supports this

1 motion.

2 THE COURT: Does anyone wish to be heard?

3 All right, I will approve the motion without  
4 objection.

5 Mr. Fox, do you wish to add something?

6 MR. FOX: No. The only thing I wanted to point out  
7 was that Harold Bordwin and Robert Tremonicon (ph.), doing  
8 terrible justice to his name, who were the real estate  
9 consultants, are in court to the extent that Your Honor had any  
10 questions as to any of the numbers. But once you approved it,  
11 I almost didn't even want to stand up and tell you that they  
12 were here if you had any questions, but they were if you did.

13 THE COURT: No, I have no ques -- I have one question.  
14 Are any landlord leases not either rejected or assumed as  
15 modified? Are any of them being simply assumed under the plan?

16 MS. NADRITCH: Yes, Your Honor. Including this one  
17 landlord that had originally objected, JW Mays (ph.), their  
18 lease is not for the modification agreement. We are similarly  
19 securing it as is. So there are a few like this.

20 THE COURT: A few are, all right.

21 MS. NADRITCH: Yes.

22 THE COURT: Are any of the release -- you have  
23 rejected some leases?

24 MS. NADRITCH: Yes, we've rejected leases and done  
25 that pursuant throughout the case, as Your Honor's aware, as

1 well as of January 13th, pursuant to our notice of rejected  
2 leases as well.

3 THE COURT: All right.

4 MS. NADRITCH: The debtors have made that  
5 determination as to what are the go-forward ones and what are  
6 the assumed leases as of January 14th -- January 13th.

7 THE COURT: All right. And those parties then have an  
8 opportunity -- they've gotten notice of the rejection, they'll  
9 have an opportunity, they'll get notice of the need to put in a  
10 proof of claim.

11 MS. NADRITCH: Yes, Your Honor. And there's already  
12 been discussions with them as regarding cure amounts and what  
13 not. So they also are aware.

14 THE COURT: All right. Does anyone wish to be heard?  
15 All right, then I'll approve the motion.

16 MS. NADRITCH: Thank you, Your Honor.

17 THE COURT: And, perhaps, we'll give Mr. Bordwin and  
18 his colleague a prize by allowing them to leave. But they can  
19 stay if they wish.

20 MR. FOX: I think the prize they want to have in mind  
21 is they have not been paid yet, and all their lease  
22 modifications were subject to being approved. So I think that  
23 they will feel comforted that that did happen today. But I'm  
24 not speaking for them, but that's probably the prize they would  
25 prefer to have.

1 Well, now, Your Honor, we're up to one of the two  
2 motions. One is confirmation, two is the TUA.

3 THE COURT: All right. And they're closely related,  
4 as I understand it.

5 MR. FOX: Well, I think they're -- they are closely  
6 related. I think that the only issue that really is  
7 outstanding would be vis-a-vis the TUAs, the adequate assurance  
8 of future performance argument under 363(b). And that, to the  
9 extent there's a lesser standard, there might be feasibility  
10 standards, which would be a higher standard to confirm the  
11 case.

12 When we were here July 14th we heard you loud and  
13 clear, although I was perfectly prepared to argue that motion  
14 and proceed, I think that everybody listened to trying to  
15 develop as Your Honor suggested to us, a clear path. I think  
16 those were your specific words directed to me. "Mr. Fox, I  
17 have a clear path for you." "I have a clear path for you that  
18 will hopefully enable you to timely exit."

19 And what was the confusion seemed to be the  
20 substantive consolidation issue. So what happened in that  
21 week, in that at least ten days that we've tried to show  
22 everybody here, including Ashley, that we were listening and  
23 trying to limit the argument so that we could have a successful  
24 and timely exit today.

25 What did we do? We went, we spoke with Mengnu; the

1 plan sponsor, we spoke with the committee, there have been some  
2 dialogues with Ashley. And they have changed; made it clear  
3 that the tranche A notes, the tranche B notes, the tranche C  
4 notes and the tranche D notes, are without recourse to  
5 Hartsdale.

6 Mr. Abada was deposed by Ashley, we gave them,  
7 certainly, an opportunity to speak and understand how he treats  
8 Hartsdale, why he treated Hartsdale, the genesis of how the  
9 Hartsdale licenses became with -- it's hard, Your Honor.

10 THE COURT: Don't -- don't -- don't -- emotion is bad  
11 for the health. And --

12 MR. FOX: You're right, Your Honor.

13 THE COURT: -- we'll proceed through the agenda in a  
14 deliberate fashion.

15 I see the changes that have been made, and they  
16 certainly appear to be significant. But Ashley continues to  
17 raise certain issues. I received their objection late last  
18 night, did not give me too much of a chance, but I have read  
19 it. And I've read most of the other papers that have been  
20 filed.

21 So we'll go through the agenda and I'll hear the  
22 objections, and I don't know -- I didn't see, if I recall  
23 correctly, too much recognition in their papers of your plan  
24 modifications. On the other hand, I assume that some of the  
25 papers were drafted before the negotiations over the last few

1 days.

2 In any event, please go ahead.

3 MR. FOX: Okay, right. Well, I think for --

4 THE COURT: And, also, give me an idea about what you  
5 propose to do today in terms of a record and testimony on the  
6 issues that Ashley has raised.

7 I gather, as far as I can tell, there are no other  
8 objections to confirmation?

9 MR. FOX: This has been the lone objection to  
10 confirmation. It's the lone objection that's outstanding.

11 THE COURT: All right.

12 MR. FOX: So I would propose to proceed today is I  
13 have filed, and there have been filed, declarations that could  
14 be used as our direct testimony for Mr. Abada, Mr. Grien, Mr.  
15 Sperry, and also Ms. Osborne. But I think her declaration  
16 really goes to the voting balloting procedures.

17 THE COURT: All right. Ms. Osborne is your balloting  
18 agent. We have a ballot certification on file. She's on the  
19 phone. Does anyone wish to be heard with regard to the issue  
20 of the ballot certification of votes?

21 MR. GOLDSTEIN: Your Honor, Michael Goldstein,  
22 Greenberg Traurig for Ashley.

23 Your Honor, all the witnesses that we would  
24 potentially cross-examine, we would not be cross-examining the  
25 ballot certification declarant.

1           So for our purposes, Your Honor, that witness can be  
2       excused.

3           We have issues with respect to classification. But  
4       with respect to the certification, what with the ballots that  
5       came in and her report, we really have no issue with that, Your  
6       Honor.

7           THE COURT: No issue, all right.

8           MR. GOLDSTEIN: So she can be excused as far as we're  
9       concerned.

10          THE COURT: So we'll admit the certification and the  
11       agent can either remain on the line and listen in or can be  
12       excused.

13          MS. OSBORNE: Thank you, Your Honor. This is Ms.  
14       Osborne. I'll be excused.

15          THE COURT: All right.

16          MS. OSBORNE: Thank you.

17          THE COURT: Then I guess everybody is off the line and  
18       we can close the line. Is that right? Anybody else on the  
19       line?

20          All right, we'll close the line then.

21          All right. Please go ahead, Mr. Fox.

22          MR. FOX: Your Honor, Ms. Osborne -- what the ballots  
23       did show is that the creditors were solicited and spoke very  
24       clearly and directly that ninety-three percent of them, of the  
25       class 3 creditors, voted in support of the case -- of the plan.



1 Four of those creditors, by the way, if I were able to review  
2 them, are strictly Hartsdale creditors, and they also voted in  
3 favor of the plan.

4 The class 2 Mengnu, seems even though there's a class  
5 of 1 was Mengnu, they voted twice. I just think that there may  
6 have been an overlap between China and the local rep here. But  
7 it's not that their claims are twice the amount, they're  
8 not -- they're one time but they voted in support of the plan.  
9 But there were two of those ballots.

10 So I think that's -- it's entirely favorable that the  
11 information that was deemed necessary to go out there, gave  
12 people a chance to be heard. They were heard and they spoke.  
13 Ashley has objected.

14 THE COURT: Right. Now, Ashley is a Hartsdale  
15 creditor and has voted against the plan. But you would propose  
16 to make them an unimpaired creditor, I gather.

17 MR. FOX: Well, I think reading his -- the ballot that  
18 they filed, Your Honor, they filed their ballot for 147,000  
19 dollars. And they filed that as a negative vote. And I  
20 don't -- the plan impairs them in the Hartsdale.

21 Why -- how I think they calculated that number is that  
22 Ashley has sold goods directly to Jennifer Convertibles outside  
23 of the TUA, and they've been doing that even prior to the  
24 opening of the Ashley HomeStores. There was a relationship  
25 that they had. And of that claim that they filed for 280

1 something thousand dollars, the 147 is I think the deficiency  
2 claim as to what that 503(b) claim would allow -- would be paid  
3 and then that -- this would be the remainder claim.

4 In total, in the Hartsdale entity, we believe, and as  
5 Mr. Abada's affidavit reconciles to the response filed by  
6 Ashley, their claim in the -- from the Hartsdale to Ashley is  
7 980,000 dollars, which we propose to cure and pay no later than  
8 the effective date, we have the money available. And that  
9 could be addressed later.

10 So they're unimpaired in the Hartsdale, so I think  
11 their only claim, I'm just working backwards to it, is 282  
12 minus their 503(b)(9) claim gives them a general unsecured  
13 claim, which is a class 3 claim, which they were one of the no  
14 voters. I think there were nine of them, or eight of them --  
15 people who voted against the plan.

16 THE COURT: Did any Hartsdale creditors vote against  
17 the plan --

18 MR. FOX: No.

19 THE COURT: -- as far as you know.

20 MR. FOX: No.

21 THE COURT: None.

22 MR. FOX: Well, as far as I know. I only had Ms.  
23 Osborne send to me her spreadsheet and her certification. And  
24 we were able to go through and note who voted for the plan. I  
25 could point out which of the four creditors voted for the plan

1 of the Hartsdale, I do have that. But of the no votes that we  
2 have none of them related to the Hartsdale entity. And I think  
3 that speaks loud and clear about how that -- how those  
4 creditors expect to be treated.

5 As to the Jennifer side, again, in terms of proceeding  
6 I would offer these declarations as my direct testimony. I  
7 think in terms of expediency I would then --

8 THE COURT: Sit down.

9 MR. FOX: -- as well as the exhibits allowing Ashley's  
10 counsel to cross them, subject to some redirect. And I think  
11 that in consideration, hopefully after and in consideration of  
12 the direct testimony and any cross-examination Your Honor would  
13 find that we would otherwise have met all aspects of  
14 confirmation.

15 And, again, assuming that we've met all aspects of  
16 confirmation with feasibility being one of them, I think the  
17 issue of adequate assurance of future performance is subsumed  
18 in the feasibility issue.

19 That's how I would intend to proceed today and subject  
20 to other people's input. I think that's probably the most  
21 streamlined way. We have filed these affidavits well in  
22 advance of today.

23 THE COURT: Are the affidavits you're speaking of the  
24 declaration of Robert Grien, which I received, I think,  
25 yesterday. And there's another -- there's a declaration of Mr.

1 Sperry. And there's a declaration of your president, right?

2 MR. FOX: President and COO and CFO; Rami Abada.

3 THE COURT: Mr. Abada.

4 MR. FOX: Together with the exhibits.

5 THE COURT: All right. Okay, does anyone wish to  
6 speak in support of confirmation of the plan, or as to the  
7 order of proceedings today; how we should proceed.

8 MR. CARR: Your Honor, Jim Carr on behalf of the  
9 creditors' committee.

10 We would like to speak in support of the confirmation  
11 of the plan, but we reserve -- we'd like to reserve our right  
12 to do so at the conclusion of any testimony that's being  
13 presented. In terms of the order of proceeding, we have no  
14 comment in that regard.

15 MR. NEIGER: Edward Neiger on behalf of Mengnu.

16 I would echo the sentiments of Mr. Carr. We would  
17 like to speak in support of the plan, but, perhaps, it would be  
18 better to do it after everything gets brought out to light and  
19 the record is made clear.

20 With respect to the order of going forward, we're okay  
21 with what Mr. Fox proposed.

22 THE COURT: All right. Anyone else? Ashley?

23 MR. GOLDSTEIN: Yes, Your Honor. Michael Goldstein,  
24 Greenberg Traurig.

25 Your Honor, in terms of procedure if Mr. Fox wants to

1 submit on the direct testimony with the declarations, which  
2 we've seen yesterday, we're prepared to deal with those on  
3 cross-examination. Mr. Abada, we depose, I'm prepared to deal  
4 with his.

5 I have two oral motions to address with respect to the  
6 other two declarations, which I'd like to have the opportunity  
7 to do that at the appropriate time, before the cross-  
8 examination. I think both of them have substantial issues that  
9 we need to deal with as to whether they come in --

10 THE COURT: The other two declarations being Mr.  
11 Sperry?

12 MR. GOLDSTEIN: Mr. Sperry's declaration and Mr.  
13 Hynes' (sic) declaration, yes, Your Honor.

14 And then in terms, Your Honor, of speaking in terms of  
15 support -- opposition, if Your Honor wants to hear kind of an  
16 opening argument preview, prepared to do that. If Your Honor  
17 thinks its best to just deal with the evidence, and proceed  
18 with argument at closing, summation, I'm prepared to do that as  
19 well. I don't have -- I think for efficiency purposes if the  
20 Court had the opportunity to review our objection of the --  
21 briefly I think you know where we're coming from --

22 THE COURT: I've read your objection -- I think I know  
23 where you're coming from, or sometimes I do. But this is a  
24 moving target. Things have changed, things changed yesterday I  
25 assume.

1 MR. GOLDSTEIN: And perhaps, Your --

2 THE COURT: So perhaps it would be useful --

3 MR. GOLDSTEIN: Okay.

4 THE COURT: -- if you gave me an opening statement  
5 that made it as clear as you can --

6 MR. GOLDSTEIN: sure.

7 THE COURT: -- exactly what your objections are to  
8 confirmation of this plan. What's been resolved, if anything.  
9 What hasn't been resolved. And what relief you want me to  
10 enter today, both with regard to the plan and the motion to  
11 assume the TUAs.

12 MR. GOLDSTEIN: I'm prepared to do that, Your Honor.

13 THE COURT: All right.

14 MR. GOLDSTEIN: And if I do that now --

15 THE COURT: That's fine.

16 MR. GOLDSTEIN: -- I would go to the podium.

17 THE COURT: That's fine.

18 MR. GOLDSTEIN: Thank you, Your Honor. Michael  
19 Goldstein, Greenberg Traurig, appearing on behalf of Ashley  
20 HomeStores and Ashley Furniture.

21 Your Honor, I will try to direct my comments really to  
22 some of the changes in the specific issues and will reserve the  
23 right to deal with more broad-scope issues at the appropriate  
24 time.

25 Your Honor, as the Court noted, there were changes

1     made. We received amendments to the plan yesterday, the day  
2     before. And so we do now know there are changes to the A, B, C  
3     and D note, which no longer make, as we understand it,  
4     Hartsdale an obligor, nor is there any security interest  
5     granted to secure those obligations.

6             I would note that the form of the document submitted  
7     before Your Honor in the signature blocks are still a little  
8     bit confusing, since there's reference to signatures by  
9     Jennifer Convertibles and its subsidiaries. It's not entirely  
10    clear the actual subsidiaries will be joined.

11            Some of the documents specifically reference Jennifer  
12    Convertible and its affiliates, and one of them, I think with  
13    the B security note maybe says "other than Hartsdale." Other,  
14    the documents don't have that language. So the documentation  
15    is still a little unclear to us. Presumably, that can be  
16    cleared up at the appropriate time and the documents can be  
17    modified to follow what the representations, at least, have  
18    been made. But as you can imagine in reading the documents and  
19    the words the two don't necessarily completely coincide. I'll  
20    attribute that not to any intention to be confusing, but  
21    probably documentations moving quickly and not, necessarily,  
22    perhaps, following the intention.

23            There is, however, Your Honor, very significant issues  
24    with respect to what I'll call the secured exit facility, and  
25    the documents that follow that. And those documents, Your

1 Honor, as I currently read them, and where we have an  
2 objection, is as follows:

3 As we understand it the secured exit facility  
4 encompasses two components. A letter of credit facility and a  
5 cash facility. The letter of creditor facility will be an  
6 amount up to five million dollars. It will be secured. But we  
7 don't have a security agreement that deals with that letter of  
8 credit. I assume that we don't have a document, that the  
9 security agreement that deals with the letter of credit will be  
10 identical to security agreement proposed for the security note.  
11 But I don't know that. But we'll give them the benefit of the  
12 doubt.

13 The security note, Your Honor, as I understand it,  
14 really accomplishes two things. It provides for a rollup of  
15 the DIP financing, and it provides for an ongoing working  
16 capital commitment of an unspecified amount, an unspecified  
17 commitment, and so we really don't know what it is. In fact,  
18 I'm not even sure how the debtor deals with feasibility when  
19 it has a working capital provider who doesn't really tell you  
20 what it's going to provide, how it's going to provide it, when  
21 it's going to provide it, how much it's going to provide it,  
22 and when it's going to decide to shut it down.

23 Our complication with that working capital facility,  
24 of course, is that it has an excess cash flow provision which,  
25 essentially, means that -- as we'll get into testimony, all of



1 the cash flow of this company that comes out of the Hartsdale  
2 segment, the Ashley segment, if you will, gets swept up to the  
3 parent and that will be used to pay back the working capital  
4 facility of this plan sponsor, the owner, Ashley's competitor.  
5 But we will come back to those issues.

6 The issue with respect to the transaction, itself,  
7 however, Your Honor, from the documentation, is that that  
8 letter of credit facility, up to five million dollars, which we  
9 assume is secured by the same security interest as the tranche  
10 E note. And the tranche E note, an amount which we're not  
11 really sure what it is, will be secured as we now read the  
12 documents by Hartsdale's inventory.

13 If I'm reading the documents correctly, Your Honor,  
14 that inventory is limited to that amount. The inventory lien,  
15 the lien is limited to the inventory amount. But make no  
16 mistake about it, contrary to some of the documents the  
17 obligation that Hartsdale is being imposed upon is the entire  
18 obligation under the LC and the entire obligation under the  
19 cash facility. The rollup DIP and some other additional  
20 working capital.

21 THE COURT: All right. Tell me how this in the future  
22 will damage or put your client at risk.

23 MR. GOLDSTEIN: Your Honor, the issue under the TUAs  
24 with respect to Ashley going forward is three-fold. One, is  
25 payment for goods.

1 THE COURT: All right. They proposed to pay you cash  
2 on delivery, is that right.

3 MR. GOLDSTEIN: And if they pay cash on delivery or if  
4 Ashley extends credits on terms that they're acceptable to,  
5 then I would submit, Your Honor, that's not the issue.

6 THE COURT: All right.

7 MR. GOLDSTEIN: And that's -- and that's never been  
8 the issue.

9 THE COURT: So payment isn't the issue.

10 MR. GOLDSTEIN: Payment to Ashley is not the issue.

11 THE COURT: Okay. All right.

12 MR. GOLDSTEIN: Number 2 --

13 THE COURT: So let's be very clear --

14 MR. GOLDSTEIN: No, no, that's I --

15 THE COURT: All right.

16 MR. GOLDSTEIN: That's not the issue. I said there's  
17 three issues but that one is not the issue.

18 THE COURT: Well, you said there were three issues and  
19 then you said we're taking one away.

20 MR. GOLDSTEIN: We're taking one away. I'm sorry.

21 THE COURT: So there are two issues.

22 MR. GOLDSTEIN: There's two remaining issues.

23 THE COURT: All right.

24 MR. GOLDSTEIN: I was trying to define the universe  
25 and be complete, Your Honor, I didn't mean to be distracting.

1 THE COURT: We're a very simple folk here in New York.  
2 We try to narrow issues.

3 MR. GOLDSTEIN: That's what I'm trying to --

4 THE COURT: We try to hone in on what the real  
5 problems are.

6 MR. GOLDSTEIN: That's -- I'm trying to address  
7 there's --

8 THE COURT: All right.

9 MR. GOLDSTEIN: We try to be simple -- even simpler in  
10 California.

11 In any event, Your Honor, the second issue is that  
12 trade bar usage agreements, the TUAs --

13 THE COURT: Yes.

14 MR. GOLDSTEIN: -- impose a number of obligations upon  
15 the licensee; Hartsdale.

16 THE COURT: All right, we're going to look at the  
17 TUAs --

18 MR. GOLDSTEIN: Yeah.

19 THE COURT: -- and you're going to tell me exactly  
20 what obligations are impacted by the assumption motion, and the  
21 plan. There's lot of vague argument in your papers, but I've  
22 got a TUA open right here, and you're going to have a chance to  
23 tell me what section of the TUA is implicated by any of this.  
24 Okay.

25 MR. GOLDSTEIN: Okay.

1 THE COURT: That's issue number one.

2 MR. GOLDSTEIN: That's issue --

3 THE COURT: Of two.

4 MR. GOLDSTEIN: That -- exactly, Your Honor. And my  
5 point about those issues is those go to the issue of protecting  
6 the brand, protecting the mark.

7 THE COURT: Right. Right.

8 MR. GOLDSTEIN: And so the --

9 THE COURT: Let's -- we'll come back to that.

10 MR. GOLDSTEIN: No, no, I just wanted to --

11 THE COURT: And you're going to tell me what section I  
12 should look at --

13 MR. GOLDSTEIN: Absolutely.

14 THE COURT: -- of the TUA. Okay, we'll come back to  
15 that. In fact, we'll come back to that in a moment. But I  
16 want you to tell me what your issue number two is.

17 MR. GOLDSTEIN: The second issue, we're now down to  
18 two issues, Your Honor.

19 The second issue, Your Honor, is that under the TUAs  
20 the licensor; Hartsdale, is obligated to maintain and pay its  
21 vendors. It's vendors, okay.

22 So Hartsdale's financial condition and, therefore,  
23 it's condition vis-a-vis and a relationship with its parent is  
24 an integral part of the TUAs. Not vis-a-vis --

25 THE COURT: So that's really a subset of your issue

1 number one.

2 MR. GOLDSTEIN: It's a subset, Your Honor, but it's a  
3 different focus.

4 THE COURT: It's a different focus. And you're going  
5 to show me where that obligation resides in the --

6 MR. GOLDSTEIN: In the TUA.

7 THE COURT: -- in the TUA.

8 MR. GOLDSTEIN: Correct.

9 THE COURT: Okay, why don't we look at the TUA right  
10 now.

11 MR. GOLDSTEIN: Okay. Your Honor, if I may, I want to  
12 get one in front of me.

13 THE COURT: Yep. Are they all the same -- they're all  
14 essentially the same, I gather.

15 MR. GOLDSTEIN: They're generally all the same except  
16 for term and location, Mr. Abada agreed with that in his  
17 deposition.

18 Your Honor, which one do you have in front of you?

19 THE COURT: I have --

20 MR. GOLDSTEIN: And I'll just make sure I have the  
21 same one.

22 THE COURT: Ashley HomeStores --

23 MR. GOLDSTEIN: What -- which --

24 THE COURT: -- business at 419 Crossways Park Drive,  
25 Woodbury, New York.

1 MR. GOLDSTEIN: That's the one I have.

2 THE COURT: Okay.

3 MR. FOX: No, no, they're all --

4 MR. GOLDSTEIN: I'm sorry.

5 MR. FOX: They're all addressed that way because  
6 that's the corporate office.

7 THE COURT: All right.

8 MR. FOX: You've got to look for the store access to  
9 it.

10 THE COURT: Where is --

11 MR. FOX: But they're all identical agreements.

12 THE COURT: Where do we look for that?

13 MS. NADRITCH: Your Honor, recital E in the first page  
14 of the --

15 THE COURT: This is Carle -- oh, thank you, this is  
16 Carle Place, New York. It's the one in the black binder, or,  
17 at least, one of them.

18 MR. FOX: Is it 168 Glenn Cove Road in Carle Place,  
19 Your Honor?

20 THE COURT: That's right.

21 MR. FOX: Right. It is Exhibit C to our -- to Mr.  
22 Abada's affidavit, if that will make it easier for you.

23 MR. GOLDSTEIN: Okay, Your Honor. So we're looking at  
24 the TUA for the Glen Cove Road, Carle Place location.

25 THE COURT: Okay.

1 MR. GOLDSTEIN: So our focus now is going to be --  
2 you're asking me where in this TUA do we have specific  
3 obligations where we're concerned and impose non -- what we'll  
4 call payment obligations, but they're important to Ashley that  
5 relate to both the assumption and the plan. Issue number one.

6 Okay. Your Honor, there's a number of provisions.  
7 We'll do this. The first one starts with Section 4, it's on  
8 page 2.

9 THE COURT: Okay.

10 MR. GOLDSTEIN: And if we look at the third paragraph  
11 it starts "Licensee will operate the license business and  
12 warehouse in accordance with the terms and conditions of this  
13 agreement, and all rules, guidelines, policies, procedures,  
14 trademark usage standards, and other requirements contained in  
15 the HomeStore manual, including all customer service  
16 requirements prescribed by licensor in the HomeStore manual.

17 THE COURT: All right.

18 MR. GOLDSTEIN: That, Your Honor, highlights for  
19 Ashley and for the relationship the importance of the licensee  
20 to be able to operate --

21 THE COURT: It might if I had the HomeStore manual.  
22 Do I have the HomeStore manual, counsel?

23 MR. GOLDSTEIN: You do not, Your Honor.

24 THE COURT: Do you have a witness here today to  
25 testify with regard to the HomeStore manual?

1 MR. GOLDSTEIN: I don't, Your Honor.

2 THE COURT: All right, so let's go on.

3 MR. GOLDSTEIN: Your Honor, okay, if we continue down,  
4 the fifth paragraph, "Licensee in operating the licensed  
5 business and warehouse will make the financial expenditures and  
6 time commitments that are necessary to properly install, learn  
7 to operate, upgrade and maintain at its sole expense, computer  
8 hardware and software."

9 THE COURT: Okay.

10 MR. GOLDSTEIN: "In accordance with the requirements  
11 set forth in the HomeStore manual."

12 THE COURT: All right. Okay, so that's a sort of a --

13 MR. GOLDSTEIN: Same question, same answer.

14 THE COURT: -- feasibility requirement related to  
15 computers.

16 MR. GOLDSTEIN: That's correct, Your Honor.

17 THE COURT: All right.

18 MR. GOLDSTEIN: Number 5, Your Honor, paragraph 5.

19 THE COURT: Yes.

20 MR. GOLDSTEIN: "Licensee will use its best efforts to  
21 solicit sales to the Ashley products from the authorized  
22 location, and in consultation with licensor to develop annual  
23 sales goals and marketing objectives, reasonably designed to  
24 assure maximum sales and market penetration of the Ashley  
25 products in the licensed territory."



1 THE COURT: All right.

2 MR. GOLDSTEIN: Okay. Again, Your Honor, we would  
3 point to this as being an example of why the financial  
4 structure of Ashley -- excuse me, Your Honor. The financial  
5 structure of Hartsdale in a relationship with Jennifer is an  
6 important component of Hartsdale's ability to comply with  
7 paragraph 5.

8 THE COURT: Right. But paragraph 5 doesn't say that  
9 they can't borrow money, and they can't pledge their assets.  
10 Is there anything in the TUA that says they can't borrow money  
11 and they can't pledge their assets?

12 MR. GOLDSTEIN: Your Honor, with respect to pledging  
13 their assets there is an anti-assignment encumbered provision  
14 with respect to the TUAs. That problem, which was a problem,  
15 has been remedied. I point that out just for the record to  
16 clarify since it was an issue we had raised before. But,  
17 otherwise, Your Honor, no.

18 THE COURT: All right. So we have a general provision  
19 that they'll do their best to stay in business and to sell your  
20 product. And I assume --

21 MR. GOLDSTEIN: That's correct.

22 THE COURT: -- since they're in business, and since  
23 they're trying to sell as much product as possible, that they  
24 will do so, but we'll see. I mean, you certainly can cross-  
25 examine on that point.

1           MR. GOLDSTEIN: Right. The question, Your Honor, is  
2 not I would argue their desire or intent with respect to  
3 selling product, the question is is Hartsdale's ability to do  
4 so comply and fulfill those obligations in light of the  
5 encumbrances and obligations imposed upon it.

6           Admittedly, Your Honor, there is not a direct  
7 prohibition with respect to that, but when we get to the issue  
8 of adequate assurance of future performance, and/or  
9 feasibility, as it relates to Hartsdale, I would submit, Your  
10 Honor, that those are critical enquiries and are relevant to  
11 our position.

12           Your Honor, the -- in the same vein as paragraph 5,  
13 paragraph 6 deals with the issue of maintaining product line  
14 inventory. I'm going to skip over and come back to 7 and 8,  
15 Your Honor, because they raise my sub -- my issue two, or  
16 rather a subpart issue.

17           Paragraph 9 deals with the ability to protect the  
18 marks and use of the marks.

19           Now, I'm going to skip forward, Your Honor. Paragraph  
20 21 and 22 deal with the obligation of providing warranty  
21 service. Very important in terms of the ability to protect  
22 customers and customer's relationships to fulfill warranty  
23 obligations. Again, Hartsdale's ability to do that implicated  
24 by its financial wherewithal to do so.

25           23 deals with advertising campaigns, Your Honor.

1 I'm skipping over paragraph 24, which is reports,  
2 because that doesn't go to the financial issue, which I think  
3 Your Honor has asked me to focus on in particular.

4 Section 24 reports really deals with a separate type  
5 of issue that goes to cure and adequate assurance, it's not  
6 related to this issue of the capitalization, if you would, with  
7 Hartsdale. So with the Court's indulgence, I'm going to pass  
8 over that one, but reserve comment.

9 Is that acceptable, Your Honor?

10 THE COURT: Yes.

11 MR. GOLDSTEIN: Okay, thank you, Your Honor.

12 Those are the ones that I would -- no, no, no. So  
13 those -- those are the ones, Your Honor, that I point Your  
14 Honor to that deal with what I would call the aggregate,  
15 acquiring product, maintaining inventory, selling it, marketing  
16 it, advertising it, providing the appropriate software,  
17 hardware, essentially acting like a good licensee with respect  
18 to this obligation. Again, we're not here to suggest bad  
19 intent or bad desire on the part of the licensee. What we're  
20 here is making the argument that in order to do that the  
21 capitalization and financial structure has to be reviewed and  
22 considered in that context.

23 If you permit me, Your Honor, I'd like to move on to  
24 issue two --

25 THE COURT: All right.

1 MR. GOLDSTEIN: -- which deals with the second part of  
2 this financial analysis.

3 THE COURT: All right.

4 MR. GOLDSTEIN: Thank you, Your Honor.

5 First, Your Honor, I want to point you to the  
6 paragraph 7 and 8, Your Honor. This deals with accessories.  
7 In relationship with the accessory manufacturers. Under the  
8 TUAs the licensee is required to provide -- purchase  
9 accessories from approved manufacturers of accessories. And  
10 they're folks who come off of a list if you will. And then,  
11 obviously, the licensee has to purchase -- buy from those  
12 approved accessory providers, and pay for them.

13 Your Honor, you'll hear, and I will acknowledge, that  
14 this is not a huge part of the Hartsdale business. But it's  
15 important, Your Honor, because it's related to the business and  
16 it's one where Ashley is in the middle of the vendor  
17 relationship. And so the licensee's ability to, in fact, deal  
18 with the accessory vendors, pay them on a timely basis, and  
19 manage that relationship in appropriate fashion is an important  
20 part of the overall relationship. And this -- these two  
21 provisions, Your Honor, talk specifically to that obligation.

22 THE COURT: Do you have any -- as a part of your case,  
23 or any evidence that pre-petition the Hartsdale debtor failed  
24 to deal with accessories in a appropriate manner?

25 MR. GOLDSTEIN: Your Honor, from a management

1 relationship perspective, no. But the argument that we're  
2 making here is not, again, one of a failure of intent or a  
3 failure of desire. Nor are we saying that they did something  
4 bad in the past, i.e., in terms how they behaved. And,  
5 therefore, we're worried about how they're going to behave in  
6 the future. We have not made that. This is as financial  
7 argument, Your Honor. So fair question, and that's our  
8 response. And I think we've been consistent in that respect.

9 THE COURT: All right.

10 MR. GOLDSTEIN: And that takes me, Your Honor, to the  
11 other paragraph, and probably the most significant piece of  
12 this puzzle with respect to the financial argument. And that's  
13 back to paragraph 4, Your Honor, on page 2.

14 And one, two, three, four -- if we go to the fourth  
15 paragraph, Your Honor, under paragraph -- it's numbered  
16 paragraph 4, so the record's clear, and then it's the fourth  
17 paragraph under that, it's on page 2. You see that one, it  
18 says "licensee in operating."

19 THE COURT: Yes.

20 MR. GOLDSTEIN: I guess, okay. So "Licensee in  
21 operating the licensed business and warehouse will pay, on or  
22 before the date they become due all sums due licensor, owner,  
23 Ashley Distribution Services Ltd." Okay, that's us, that's my  
24 client, Your Honor. That was my first point that we said is no  
25 longer a point.

1 But here's the critical piece. "And all other parties  
2 with which licensee does business." "All other parties with  
3 which licensee does business." This TUA requires them to pay  
4 on or before the date they become due all other parties with  
5 which licensor does business.

6 Your Honor, this is a license agreement, it's not a  
7 lending relationship. And there is limitations to  
8 licensor/licensee relationships. So there aren't financial  
9 covenants and they're not EBITDA tests.

10 But there is imbedded in this document and it's in  
11 other places as well, a heightened concern about the financial  
12 condition of the licensee. And this provision is one of the  
13 key provisions, Your Honor. This doesn't deal with monetary  
14 obligations to the licensor, this deals with the monetary  
15 obligations of the licensee to the licensee's vendors. So if  
16 Hartsdale can't pay its vendors because all of its cash is  
17 swept to its parent and its parent's assets are encumbered and  
18 its parent's assets, and any excess cash flow is used to pay  
19 down the plan sponsor, and the plan sponsor, who's the equity  
20 holder, has no commitment to lend, there is no assurance and no  
21 feasibility proof that Hartsdale can pay its vendors. And what  
22 do we know, as a matter of fact from this record, is that  
23 Hartsdale filed schedules, Your Honor, incomplete as they may  
24 be. But, nonetheless, that showed some of their vendors, their  
25 landlords, and their merchandise vendors, including Ashley.

1 Now, that schedule shows approximately, memory serves, a  
2 million-six. Of which about 900,000 or so was Ashley. So you  
3 had, roughly, another 800,000/700,000 of third party vendors.

4 Now, that list does not include, because this debtor  
5 apparently doesn't do this, vendors that may have been owed for  
6 advertising that the Ashley stores received. Or vendors that  
7 may have been owed for insurance. Or vendors that may have  
8 been owed for any other corporate overhead.

9 Those vendors aren't listed in those schedules, so I  
10 don't really know who are the other vendors; the other parties  
11 with which licensee does business should have been on the those  
12 schedules and were unpaid. But I do know that there's a fair  
13 amount of them that were acknowledged.

14 And so we do have historical proof that this is a  
15 problem in times of trouble, and we know that this is an  
16 obligation going forward which has not been addressed.

17 In fact, Your Honor, I will submit to you that as a  
18 matter of cure, under this TUA, Hartsdale creditors have to be  
19 paid in cash in full, in order for my client to be cured.  
20 There is no third party beneficiary provision under here. So  
21 I'm not suggesting that third party vendors could have made  
22 this argument, and I'm not suggesting that I couldn't waive it.  
23 So it's not anybody else's issue but mine. But it's my issue,  
24 loud and clear.

25 THE COURT: And what is your legal support for this

1 proposition?

2 MR. GOLDSTEIN: 365, Your Honor. This is a monetary  
3 default made under the TUA, which hasn't been cured. You want  
4 to deem it not to be a monetary default because it's a third --  
5 it's an obligation of a third party, then I submit, Your Honor,  
6 it's a non-monetary default because it's a failure to comply  
7 with this condition, and you have to cure non-monetary defaults  
8 in order to cure, unless the counterparty waives.

9 Again, Your Honor, I point this out not necessarily to  
10 suggest that Ashley can't deal with this issue in appropriate  
11 fashion under appropriate circumstances, but you've asked me  
12 Your Honor to point to specifics that bring us here today. And  
13 this is an issues that bears directly all four corners, and  
14 simply, I would submit, on why adequate assurance and  
15 feasibility and the structure of the Jennifer/Hartsdale  
16 relationship is squarely at issue here.

17 As an aside, it's a technical matter, and I feel very  
18 strongly about it, I think it's a dead-bang winner and they  
19 can't get over it without my client's consent. But, again --

20 THE COURT: So -- and the moral of that particular  
21 story is we should simply cease the hearing at this point,  
22 agree that Ashley can kill this company, and do away with a  
23 competitor. And you use the word competitor already in your  
24 presentation. And there's no reason to go any further, is that  
25 what I should conclude from your latest comment?



1 MR. GOLDSTEIN: Your Honor, I think you should  
2 conclude that if Ashley's words were heard by the debtors, and  
3 the debtors gave recognition to this issue then, perhaps, I  
4 wouldn't have had to stand here today. Because I asked Mr.  
5 Abada this question on the stand -- on his deposition. And he  
6 believed that he had no obligation to his vendors under this  
7 document. He believed that his only obligations were to  
8 Ashley. Their view is that Ashley is a licensee and they're a  
9 good licensee, but there's no relationship between the license  
10 and the financial play here. I think they've fundamentally  
11 misunderstood the relationship.

12 They apparently heard us a little bit, because they've  
13 modified their document some. But they haven't gotten all the  
14 way. As I said, Your --

15 THE COURT: What is all the way as far as you're  
16 concerned?

17 MR. GOLDSTEIN: Your Honor, I believe, and I have it  
18 in front of me, because I thought about this.

19 THE COURT: Well, that's good.

20 MR. GOLDSTEIN: I did. I did, Your Honor. That in  
21 our conclusion to our objection we said in the alternative  
22 here's what we think should be done.

23 THE COURT: All right, let's look at that. I remember  
24 reading it.

25 MR. GOLDSTEIN: And what I said, Your Honor, is "To

1 the extent the Court rules otherwise," which is allow  
2 assumption and allow confirmation, "Ashley respectfully  
3 requests that the Court, with respect to the TUAs, require  
4 Hartsdale to deposit in a segregated interest account the funds  
5 required to cure all monetary defaults under Section 4 of the  
6 TUAs."

7 THE COURT: I gather that's been agreed to?

8 MR. GOLDSTEIN: Their plan says they're going to put  
9 money in a reserve. The confirmation order doesn't say that.

10 THE COURT: Well, the confirmation order isn't entered  
11 yet.

12 MR. GOLDSTEIN: Yeah. I --

13 THE COURT: All right.

14 MR. GOLDSTEIN: -- assume, Your Honor --

15 THE COURT: All right. So A -- we've resolved A,  
16 right, Mr. Walsh -- uch, there I go again, everybody's doing  
17 it. Mr. Fox?

18 MR. FOX: Your Honor, we have the 980,000 dollars. We  
19 painstakingly reconciled the 900 --

20 THE COURT: Just say yes, you'll put it in escrow.

21 MR. FOX: Yes, we do.

22 MR. GOLDSTEIN: Your Honor, just let me be clear,  
23 because we have a dispute on the 980, right. We think it's a  
24 million-two and the 980 was moved from 940 because of the -- we  
25 had an attorney's fees claim. So we think the dollar amount is

1 greater. That's --

2 THE COURT: What's the difference between 980 -- what  
3 is that, all attorney's fees?

4 MR. FOX: You filed a proof of claim in the  
5 Hartsdale --

6 THE COURT: No, no, don't. You can argue -- I gather  
7 that's not a critical point.

8 MR. GOLDSTEIN: It's not a --

9 THE COURT: But, again, counsel, you're going to have  
10 to show me where in the documents you get a right to attorney's  
11 fees in connection with this plan.

12 MR. GOLDSTEIN: Okay, Your Honor.

13 THE COURT: Okay. Or under 365 assumption. You  
14 can --

15 MR. GOLDSTEIN: That's fine.

16 THE COURT: You can tell me, but that's -- perhaps,  
17 that's for another day.

18 MR. GOLDSTEIN: I think it's for another day, Your  
19 Honor, because under their procedures --

20 THE COURT: That's fine.

21 MR. GOLDSTEIN: -- they listed their cure. I'm not  
22 sure if it was -- but our time to object to the cure amounts  
23 specifically hasn't been --

24 THE COURT: All right, we'll worry about that another  
25 day.

1 MR. GOLDSTEIN: But, Your Honor, I'm -- just so I'm  
2 clear, and Your Honor's clear, that since I have -- this  
3 sentence says "To the extent the Court rules otherwise" so I'm  
4 assuming Your Honor is allowing assumption, notwithstanding the  
5 fact that I think they have to pay the third party vendors.  
6 So, therefore --

7 THE COURT: Well, where does it say that here? On  
8 page 22 and 23, where does it say that?

9 MR. GOLDSTEIN: It says that --

10 THE COURT: You said you gave this some thought.

11 MR. GOLDSTEIN: I did, Your Honor.

12 THE COURT: And tell me where does it say that?

13 MR. GOLDSTEIN: Your Honor, it doesn't say it here,  
14 what it --

15 THE COURT: Okay, well, let's go through this which  
16 you said you gave some -- you know, I've got to start  
17 somewhere.

18 MR. GOLDSTEIN: Your Honor, I'm not trying to be  
19 difficult. All I wanted to clarify is that Section 4, the  
20 TUAs, is the section that requires the payment to the third  
21 party vendors --

22 THE COURT: Yes.

23 MR. GOLDSTEIN: -- you read that.

24 THE COURT: Okay.

25 MR. GOLDSTEIN: And all I want to make it clear to the

1 Court, so the Court understands, I'm not suggesting when we're  
2 talking about this language right here, that they would have to  
3 reserve those dollar amounts. Because this sentence assumes  
4 you've overruled that objection, that's all I'm saying. I just  
5 want to be clear. Because, otherwise, they couldn't have  
6 assumed because they're not proposing to do that.

7 THE COURT: All right.

8 MR. GOLDSTEIN: So we're limiting what Section 4  
9 requires in this sentence, I just want to --

10 THE COURT: Okay.

11 MR. GOLDSTEIN: -- be clear what I'm saying so I'm not  
12 being difficult, but I am reserving that issue because we've  
13 assumed you denied it, that's all.

14 So you have to pay Ashley, because I've ignored  
15 payment to vendors.

16 THE COURT: All right.

17 MR. GOLDSTEIN: B says you have to comply with the  
18 other obligations which are all, Your Honor, the loose  
19 obligations that we went through. Because, again, you've  
20 denied -- you've overruled adequate assurance and financial  
21 performance -- and financial feasibility. But -- so that's why  
22 we say specifically comply with the reporting requirements.  
23 And I go in detail, because we had a lot of colloquy about what  
24 this really means, and so we said this is what we want. And  
25 we've been very clear. And I think Mr. Abada's deposition

1 testimony says he can do all this. They haven't done it in the  
2 past, but he can do all this.

3 Y says "Comply with the confidentiality provisions by  
4 restricting the plan sponsor from the receipt of any  
5 confidential information." That's been an issue we've raised  
6 and here's a specific proposal to deal with that.

7 THE COURT: All right.

8 MR. GOLDSTEIN: They've been unwilling to do that,  
9 they say it doesn't apply, or they say we will do it, but we  
10 were very concerned about that.

11 And Z says "Segregated in an interest-bearing account  
12 are Hartsdale customer deposits." Our concern, Your Honor, is  
13 that under -- in the Hartsdale situation customers make  
14 deposits at 100 percent, that's -- we've been very concerned  
15 about that. We think that's important protection under this  
16 structure.

17 THE COURT: All right.

18 MR. GOLDSTEIN: And then 2, where like 2 says with  
19 respect to the plan let's make it clear that Jennifer remains  
20 liable on its intercompany obligations to Hartsdale.

21 It's not clear to me what they're doing with the  
22 intercompany. There's pre-petition intercompany, Hartsdale has  
23 a receivable, essentially, from Jennifer, because Hartsdale is  
24 profitable, all the cash has been upstreamed. Mr. Abada didn't  
25 know what that dollar amount is. In theory, it's a pre-

1 petition claim, it should be treated under the plan. There  
2 should be a payment on it, and it should go to Hartsdale, and  
3 it should be accounted for. It's not 100 percent claim, it's a  
4 general unsecured claim. Post-petition, it's 100 percent  
5 claim. The Court ordered them in the cash management motion to  
6 keep track of that, I don't know if they did or not. But they  
7 say they can, so they should know what that is. That's 100  
8 percent claim. And post-confirmation we ought to know how much  
9 money is being upstreamed, what is the Hartsdale asset.

10 B, require JCI to affirm its guarantee. They've said  
11 that in their last set of pleadings. Their plan wasn't clear  
12 about that. We pointed to that issues. But I think their most  
13 recent pleadings say, and Mr. Abada said that they're going to  
14 do that, it wasn't very clear to me that that's what he meant,  
15 but I think they've cleared that up, I don't think that's an  
16 issue.

17 C, Your Honor, they've dealt with the tranche A, B, C,  
18 and D notes. They've stricken Hartsdale's liability for those.  
19 So they've already done that. And so we have remaining, Your  
20 Honor, the structure of the E note.

21 D deals with the imposition of a lien, that goes with  
22 the obligation. They've changed the document, so the tranche  
23 A, B, C and D note no longer include any encumbrances.  
24 However, as I articulated at the start, the E note does, so  
25 that's still an issue.

1           And that's it.

2           So, Your Honor, we think this is actually eminently  
3   attainable. We think that the confidentiality -- to put it  
4   simply, the confidentiality is important to us and can be dealt  
5   with. We think, Your Honor, that the reporting, which I've  
6   detailed in several lines, is something they can do, it is  
7   eminently reasonable. In fact, I didn't get to paragraph 24,  
8   but that's really what paragraph 24 requires.

9           I've talked too long already on the E note structure,  
10   so I won't repeat that. They've already dealt with the  
11   guarantee. They've said they can account for the intercompany  
12   claims, so they ought to be able to do that.

13          And as far as the cure amount goes, Your Honor, as  
14   long as we know that there's going to be money set aside in an  
15   account for the amount that we assert, and we have the  
16   opportunity to litigate that in accordance with their  
17   procedures, and that money will actually be somewhere and not  
18   flushed or in some working capital line, and subject to some  
19   other lien, then we can deal with that as well.

20          And so, Your Honor, in the alternative paragraph I'm  
21   not sitting here before you and saying pay Hartsdale's other  
22   vendors 100 cents on the dollar and kill this case for my  
23   client's benefit. I'm not saying that.

24          THE COURT: All right.

25          MR. GOLDSTEIN: But what I am saying is unless you



1 protect me going forward and make sure I don't get into this  
2 situation again, you can't do this over my objection.

3 THE COURT: Tell me if you could, can you identify the  
4 other unpaid vendors who you're concerned about, or your client  
5 is concerned about?

6 MR. GOLDSTEIN: Your Honor, the -- I can only impart  
7 because the Hartsdale schedule of assets and liabilities that  
8 was filed in the Hartsdale case, lists only vendors who are  
9 merchant vendors and landlords, as far as I understand it. So  
10 it doesn't include advertising vendors. It doesn't include  
11 insurance vendors. It doesn't include -- I mean, to be frank,  
12 Your Honor, I'm not sure what else wouldn't be included in  
13 that. But in Mr. Abada's deposition it was very clear the  
14 Hartsdale cash, the Ashley cash, goes in an Ashley  
15 concentration account, it pays a limited set of things. And  
16 then it gets moved to the Jennifer concentration account where  
17 all the other expenses are paid. And they didn't file  
18 schedules as far as I know that says who's a vendor of whom.

19 So, again, Your Honor, I don't want to get off-track,  
20 but I would say as a footnote, if you got to the class 3 issue  
21 in the non-substantive consolidation, substantive  
22 consolidation, and whether all the creditors in Class 3 who  
23 voted or rejected, whether they're Jennifer creditors or  
24 Hartsdale creditors, it's not so clear that some of the  
25 creditors that Mr. Fox thinks voted against the plan who were

1 Jennifer creditors may, in fact, not be Hartsdale creditors.  
2 Which I would submit, Your Honor, then puts them squarely in  
3 the crosshairs of the best interest test, which we talk about  
4 in our brief.

5 But, again, I'm not here to -- we're not focused on  
6 that, Your Honor, I'm trying to answer the Court's direct  
7 questions --

8 THE COURT: Thank you.

9 MR. GOLDSTEIN: -- and find solutions. But that --  
10 but I can't answer you more specifically than that.

11 THE COURT: All right.

12 MR. GOLDSTEIN: Your Honor, I started at the podium  
13 because you asked me to address what's changed and how we dealt  
14 with that. I think I've done that in terms of their plan  
15 changes. I think I've elaborated in broad strokes the  
16 adequate -- the TUA issues from a cure and adequate assurance  
17 perspective. I touched upon a little bit the interrelationship  
18 between those and the plan, our brief talks to them in more  
19 detail. I'm happy to take a recess to think about it, Your  
20 Honor. Happy to sit down and deal with the direct testimony.

21 THE COURT: Procedurally, how would you suggest we  
22 proceed?

23 MR. GOLDSTEIN: Your Honor --

24 THE COURT: The debtors have suggested that we admit,  
25 for purposes of direct testimony, certain affidavits. You've

1 referred - you've distinguished I think among some of them.

2 MR. GOLDSTEIN: Correct, Your Honor.

3 THE COURT: And you then have the opportunity to  
4 cross-examine.

5 MR. GOLDSTEIN: Right. Your Honor, we have no  
6 objection to Mr. Abada's declaration in terms of it being  
7 submitted as direct testimony. We would ask the opportunity to  
8 cross-examine him.

9 THE COURT: What about Mr. Greer (sic)?

10 MR. GOLDSTEIN: Mr. Greer (sic), Your Honor, we  
11 have -- we have a serious problem with that declaration and we  
12 would request that the Court strike it on the following  
13 grounds.

14 As I read Mr. Greer's -- if I can have a minute, Your  
15 Honor, I want to get my notes that -- I left those notes at the  
16 desk? Thank you, Your Honor.

17 (Pause)

18 MR. FOX: Just to help this, it's Mr. Grien, not  
19 Greer.

20 THE COURT: Grien.

21 MR. GOLDSTEIN: Thank you, Your Honor. It's Grien,  
22 G-R-I-E-N.

23 Your Honor, as we understand the declaration for Mr.  
24 Grien, it's being offered as expert testimony. And we have a  
25 problem with that. And believe that that declaration cannot be

1 qualified as expert testimony.

2 Mr. Grien is employed by TM Capital, the debtors'  
3 financial advisor. The debtors' financial advisor was employed  
4 pursuant to an order of this Court, an application of this  
5 Court, approving their application under 328(a). Not 330,  
6 328(a).

7 That employment application includes, Your Honor, a  
8 transaction fee; 500,000 dollars "upon consummation of a  
9 successful restructuring." Your Honor, it's a classic conflict  
10 of interest. It nullifies any credibility as an expert.

11 THE COURT: Well, I've written on this subject --

12 MR. GOLDSTEIN: You have, Your Honor, and that was my  
13 next --

14 THE COURT: -- at least twice.

15 MR. GOLDSTEIN: That's my next point.

16 THE COURT: And it doesn't nullify the testimony of  
17 the witness. It must be considered in connection with the  
18 testimony of the witness. And I don't think I -- did I say  
19 differently in --

20 MR. GOLDSTEIN: Oneida --

21 THE COURT: -- Oneida or in -- I think the other one  
22 was Granite --

23 MR. GOLDSTEIN: Your Honor, I only got this last  
24 night, so I have to confess that I did not read Granite.

25 THE COURT: I think it weighs --

1 MR. GOLDSTEIN: I read Oneida and I --

2 THE COURT: It weighs heavily.

3 MR. GOLDSTEIN: It weighs heavily, Your Honor.

4 THE COURT: But I don't think it requires the witness  
5 to be excluded. And I'll certainly hear from any expert that  
6 you wish to call today.

7 So, no, I'm not going to exclude the testimony,  
8 there's no jury. You can argue. It is, by the way, and I  
9 don't know if you specialize in bankruptcy law, but it is a  
10 pervasive and frequent problem --

11 MR. GOLDSTEIN: It is, Your Honor, and --

12 THE COURT: -- in bankruptcy cases.

13 MR. GOLDSTEIN: It is, Your Honor. And if I --

14 THE COURT: And it comes up time and time again. And  
15 perhaps the solution is to exclude transaction fees altogether.  
16 But no one else has jumped -- well, the lawyers in the room  
17 might jump to that --

18 MR. GOLDSTEIN: It is amazing, Your Honor --

19 THE COURT: -- to support that proposition.

20 MR. GOLDSTEIN: Well, I think there's a different  
21 alternative, Your Honor, which I think the debtor practices  
22 develop since your comments. My notes say that case was in  
23 1985, if I'm reading it correct.

24 THE COURT: Oneida?

25 MR. GOLDSTEIN: Oneida.

1 THE COURT: No, it's not that long ago.

2 MR. GOLDSTEIN: It's not that old.

3 THE COURT: No. I wasn't even a judge in 1985. I was  
4 still in high school in 1985.

5 MR. GOLDSTEIN: See, I can't even read my own  
6 handwriting.

7 THE COURT: Maybe it should be 2005.

8 MR. GOLDSTEIN: 2006.

9 THE COURT: 2006.

10 MR. GOLDSTEIN: 2006, yeah, my apologies, Your Honor,  
11 I was reading the wrong number. 2006.

12 THE COURT: That's all right.

13 MR. GOLDSTEIN: But I think the better policy, Your  
14 Honor, is that you don't have your financial consultants being  
15 your experts.

16 And if I had the time, Your Honor, I actually think  
17 you're not alone on this, I actually think there's a lot of  
18 law. I do practice bankruptcy law, I've been doing it for -- I  
19 think you made reference to history or something, and I think I  
20 share some of those gray hairs.

21 I think the better practice is, Your Honor, and has  
22 become the practice, to not do this. And I think other  
23 courts --

24 THE COURT: Well, maybe that's for debtors in  
25 California that have lots and lots of money to hire multiple

1 experts.

2 MR. GOLDSTEIN: Perhaps, Your Honor.

3 THE COURT: It certainly does happen. So I think I'll  
4 rule that you can certainly cross-examine and argue credibility  
5 of the expert testimony based on the transaction fee issue.  
6 But I don't think it requires that the testimony be excluded.  
7 And I don't believe that in Oneida or in Granite Broadcasting,  
8 I think was the other case of mine, in which it came up far  
9 more seriously, actually, and I don't think I excluded the  
10 testimony, but I said that it would weigh against the  
11 credibility of the witness. But there, of course, I was also  
12 trying to determine a question of valuation. And I had  
13 conflicting testimony.

14 Yes, counsel.

15 MR. CARR: Your Honor, as Your Honor may recall in  
16 connection with Granite, we had five days of testimony on  
17 valuation. And both financial advisors had a success fee based  
18 on valuation. And that's when Your Honor made that  
19 determination.

20 THE COURT: Well, I'm trying to forget about it as  
21 much as I can.

22 MR. GOLDSTEIN: Your Honor, I'm not disa --

23 THE COURT: Particularly, the five days of testimony.  
24 Please go ahead.

25 MR. GOLDSTEIN: Thank you, Your Honor.

1           And with respect to the Sperry declaration, Your  
2           Honor, I'm not exactly sure what it's being offered as. If  
3           it's being offered as an expert testimony there's no support or  
4           qualification with respect to that, as set forth in the  
5           declaration on its face.

6           If it's being offered as a fact witness, the  
7           declaration says, I believe, I believe, I believe. There's no  
8           foundation, there's nothing in the declaration that indicates  
9           that that witness is testifying with respect to personal  
10          knowledge about anything. So I think on the face of it, Your  
11          Honor, that declaration should be stricken because it doesn't  
12          satisfy either test for being qualified as an expert or to be  
13          as a fact witness.

14          THE COURT: And was there a fourth --

15          MR. GOLDSTEIN: No, there's not, Your Honor.

16          THE COURT: Just the three. Why don't we do this --

17          MR. GOLDSTEIN: And the ballot agent, Your Honor, I  
18          had no problem with it coming in.

19          THE COURT: Thank you. Why don't we do this. With  
20          regard to Mr. Sperry's declaration, why don't we hold on that.  
21          We are going to take a lunch break at some time. And  
22          consideration can be given to the question whether or not the  
23          parties wish to put him on as a live witness to supplement his  
24          declaration, or whether his declaration is really, essentially,  
25          cumulative, and may not be needed under the circumstances.



1 I've overruled your motion to strike the Grien  
2 declaration. But, certainly, you can enquire and cross-  
3 examine. The same for Mr. Abada.

4 We can take some of the cross now before lunch or it's  
5 12:20, we can take a lunch break now, give a chance for the  
6 parties to, perhaps, clarify where we are, and then proceed  
7 with any necessary testimony right after lunch.

8 What is your pleasure? Mr. Fox?

9 MR. FOX: I would probably think it's probably an  
10 appropriate time to break. This way people can gather their  
11 thoughts and come back 1 o'clock and start. But if Mr.  
12 Goldstein wants to start, I wouldn't have any objection.

13 MR. GOLDSTEIN: I don't have any objection to a break  
14 now, Your Honor.

15 THE COURT: Well, let's take a break and come back at  
16 1:15, allowing the parties a little more time for lunch. 1:15  
17 usually means 1:30. If I say 1:30 we'll start at 1:45. If I  
18 say 1:15, we'll probably start at 1:30 and the parties will  
19 have a chance to get some lunch.

20 Anything else we can profitably do before lunch?

21 MR. FOX: The only thing I'd like to do, Your Honor,  
22 if you'd like, and I can do this again at the start of 1:15  
23 since Mr. Goldstein commented a few things, I think that  
24 there's a -- just in terms of putting forth certain  
25 misunderstandings that we have on the record about the --

1 THE COURT: All right, anything that can be clarified  
2 in terms of narrowing the issues, going down the list on  
3 page -- without presuming any decision at all, but at least  
4 trying to narrow those issues on page 23 -- 22 and 23, that  
5 would be helpful. Anything we can do to narrow issues, it  
6 seems to me is helpful.

7 No matter what my ruling is today, as I've said  
8 before, if the debtor continues in business and Ashley  
9 continues as a supplier, the best of business relations between  
10 the parties is going to include everyone's opportunity, both  
11 Ashley and the reorganized debtors. So I think we should do  
12 whatever we can today to resolve issues, if possible. And I  
13 know a lot has been done in that regard, and the remaining  
14 issues I'm not suggesting are solvable by anybody except the  
15 Court ruling. However, if they can be narrowed that's always  
16 beneficial to all the parties.

17 MR. FOX: I would like that opportunity, and I think I  
18 could discuss it.

19 This past weekend there was an important trade show  
20 that Ashley was attending, probably had a big tremendous booth.  
21 And I know for a fact, or at least I don't think it's a  
22 question, that not only did Mr. Abada meet with Todd Womick  
23 (ph.); the president of Ashley, as did Tom Disveri (ph.),  
24 represent the plan sponsor. So there are continuing dialogues.

25 I think what Mr. Goldstein's arguments, really, are

1 just objective financial, you know, concerns, which I think are  
2 addressed in our declarations. I'm happy to let him explore a  
3 little further on cross of Mr. Abada or Mr. Grien. That should  
4 ameliorate the issues on -- you know, the 800,000 dollars of  
5 other creditors.

6 I don't want to confuse people more, but I can tell  
7 you there are six landlords listed in those, have all signed  
8 these modification agreements, one of them is in court today,  
9 represented by Ms. Pollack.

10 The other creditors in total represent less than  
11 120,000 dollars. Four of those -- when I mentioned to Your  
12 Honor before that four of those Hartsdale creditors voted none  
13 of them were landlords. They were all -- I can go to them,  
14 they weren't material. But they were solicited and I'm not  
15 double counting a landlord who had a lease modification. So  
16 we're not really talking about a lot.

17 Ashley will be -- there'll be sufficient money put in  
18 escrow to cure whatever amount that is --

19 THE COURT: Well, I see in your papers that you've  
20 agreed to a separate Ashley bank account, 100,000 dollars.  
21 They seem to want to some additional protection, vis-a-vis,  
22 Ashley deposits. I don't have to -- I'm not going to get in  
23 the middle of any of these issues.

24 Let me simply say we'll resume at 1:30. And if you  
25 would like a little more time to explore and, perhaps, narrow

1 the issues, we can resume at 1:45 or 2 o'clock.

2 MR. FOX: Well, I --

3 THE COURT: But we don't necessarily have to.

4 MR. FOX: Well, I'm sure -- if I may have a comment, I  
5 would like to take as much time as -- maybe 1:40 -- 1:15 or  
6 1:30 is probably better, because I'd like to discuss --

7 THE COURT: Well, we'll say, certainly, we're now at  
8 12:30. We won't start again before 1:30, which probably means  
9 1:45. So the parties can get lunch, they can bring lunch in if  
10 they want. You may have to eradicate it on the way in, but I  
11 can also try to ask the guards to let you have your lunch.

12 MR. GOLDSTEIN: Your Honor, if I may, I have one  
13 question of scheduling.

14 THE COURT: Yes.

15 MR. GOLDSTEIN: Just to have a sense of timing, if  
16 discussions go or don't go, what the Court's calendar is in  
17 terms of what -- how long we're going today, or we're not  
18 going -- yeah, I just --

19 THE COURT: I can go -- if we can get a reporter I can  
20 go today till about 7. Not -- quarter to 7, not much beyond  
21 that.

22 MR. FOX: There's one other thing, Mr. Goldstein. You  
23 should check the dial --

24 THE COURT: However, if we get everything done early  
25 you can get on a plane to California, you could get out of the

1 snow which is coming tomorrow.

2 MR. FOX: Only other thing on the record that was not  
3 completed is there has been a security agreement filed for the  
4 exit facility. I don't know why you didn't pick it up, or it  
5 wasn't served. I can give you a copy when this court is --  
6 when we adjourn. It's there.

7 THE COURT: I'm sure that type of -- those issues, the  
8 details of the documentation can be looked at.

9 Mr. Neiger.

10 MR. NEIGER: Oh, I was just going to say -- make one  
11 more clarification with respect to the tranche E note.

12 Hartsdale is only an obligor to the extent of the  
13 value of its inventory it receives from Ashley, it's not an  
14 obligor on the entire tranche E note. So I just wanted to make  
15 that clear. Thank you.

16 THE COURT: All right. Well, perhaps, we'll clarify.

17 MR. CARR: Your Honor, in connection with Mr.  
18 Goldstein's arguments, I just -- I wanted clarification so that  
19 I can prepare adequately to respond to those arguments. Mr.  
20 Goldstein said a lot of things in connection with his opening  
21 statement going through the agreement.

22 But the one issue that I'm still not clear on, is it  
23 Ashley's position that paragraph 4, specifically, the fourth  
24 paragraph of paragraph 4, that the debtors are unable to assume  
25 this agreement because all of the creditors in Hartsdale are

1 not getting paid in full? I was very unclear on that.

2 THE COURT: Well, why don't I take that up --

3 MR. CARR: I thought he said yes initially and then  
4 said no.

5 THE COURT: -- when we resume. If that's not  
6 clarified -- I think we have a record --

7 MR. CARR: Or is it going forward?

8 THE COURT: -- on that. I'm not sure entirely but it  
9 is --

10 MR. GOLDSTEIN: I'm happy to clarify --

11 THE COURT: You were stating -- yes.

12 MR. GOLDSTEIN: I'm happy to clarify it if the Court  
13 wants me to or we can defer.

14 THE COURT: All right, you can state your position on  
15 it.

16 MR. GOLDSTEIN: Yes. As a technical read of the  
17 document, your Honor, and application of 365, our legal  
18 position and argument, Your Honor, will be that the vendors  
19 have to be paid in full in order to satisfy that provision in  
20 paragraph 4. And that's a condition to cure.

21 We believe, Your Honor, that that's a benefit that  
22 runs only to Ashley. Their vendors cannot stand up and make  
23 that argument as third party beneficiaries. And Ashley can  
24 clearly waive that condition. And, therefore, Your Honor, when  
25 I was going through paragraph 22, and we were talking about

1 paragraph 4, I was very clear to say in that paragraph we were  
2 not saying you have to pay vendors, because I assume that the  
3 Court had rejected that argument.

4 So I wanted to make it very clear, Your Honor, that  
5 we're not sitting here trying to hold up this case if we can  
6 otherwise resolve issues on that issue.

7 But as a legal technical matter, yes, Mr. Carr, we  
8 believe that in order to assume those TUAs over our objection  
9 those vendors have to be paid.

10 THE COURT: But you can't tell me, as you stand here  
11 today, what you're talking about with any specificity.

12 MR. GOLDSTEIN: Well, I can tell you, Your Honor, that  
13 the vendors on schedule of assets and liabilities, that's a  
14 million-six, that's a start. And I think what I heard Mr. Fox  
15 say is well, there's some landlords on that list and there all  
16 being taken care of. And if they are then that's not an issue.  
17 But there are also other vendors on that list who are not being  
18 paid in full. He suggests that that amount is a non-material  
19 amount. I think he said maybe a couple of 100,000 dollars.

20 If it is maybe it's not as big an issue as perhaps we  
21 thought it was.

22 THE COURT: All right. I think we've gone as far as  
23 we can --

24 MR. GOLDSTEIN: But that's I think as far as I can,  
25 Your Honor.

1 THE COURT: -- for now.

2 MR. CARR: He clarified it for my purposes, Your  
3 Honor. Thank you.

4 THE COURT: All right, thank you.

5 All right, we'll take a break.

6 You have a question?

7 MR. NEIGER: May I, Your Honor, just to say one more  
8 clarification on the record.

9 The Hartsdale inventory does not serve as collateral  
10 on the LC portion of the exit facility. And that's a very  
11 important point to make.

12 MR. GOLDSTEIN: I'm sorry, could you please repeat  
13 that, counsel?

14 MR. NEIGER: Yes. The Hartsdale inventory --

15 MR. GOLDSTEIN: Yes.

16 MR. NEIGER: -- is not collateral on the LC portion of  
17 the exit facility.

18 Your Honor, we've done everything we can to try to  
19 remove the risks that they raise with respect to  
20 collateralization amount and obligations.

21 THE COURT: All right. I'll hear testimony on that  
22 point, if necessary.

23 MR. GOLDSTEIN: Yeah. And I'm happy to look at those  
24 documents and be clarified, if that's the case.

25 MR. FOX: Judge, can we leave our papers here?



1 THE COURT: Leave all the papers just where they are.  
2 We'll lock the door.

3 The first person back, if the door is locked come to  
4 chambers, which is on the fifth floor, and we'll open the door  
5 for you.

6 MR. FOX: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Recess from 12:32 p.m. until 1:51 p.m.)

9 THE COURT: All right. Please be seated. We're back  
10 on the record in Jennifer Convertibles. Where are we?

11 MR. FOX: Well, Your Honor, I think we're at the --  
12 unfortunately, the same place where we are where we left off  
13 and there are just -- we would just wish to point out is we  
14 have had some discussions. I think we're in agreement to agree  
15 that the -- on the who's an obligor and who's not and what  
16 security is or isn't going to be given on the A, B, C, D, E,  
17 and exit facility. Mr. Goldsmith (sic) -- recently we were  
18 pointing out that it's clear that on the A, B, C and D that  
19 Hartsdale will not be a grantor or an obligor, on the E note it  
20 will be an obligor -- and I'm going to get it wrong so --

21 MS. NADRITCH: Let me just clarify, Your Honor. With  
22 respect to the exit facility, there's two parts. There's an E  
23 note and there's a LoC facility. The LoC facility is a letter  
24 of credit facility in the amount between three to five million  
25 that will act as a backstop to credit card processors upon

1 emergence of bankruptcy. On that LoC facility, Hartsdale  
2 Convertibles is an obligor but none of its assets are being  
3 encumbered or pledged, you know, as collateral to any -- to, I  
4 guess, the credit card processors -- or to Mengnu rather, under  
5 that facility.

6 The second part of the exit agreement is the tranche E  
7 Note. Under the tranche E note, the only assets of Hartsdale  
8 that are being encumbered is inventory to be purchased from  
9 Ashley. As you know, Hart -- E facility, Your Honor, is a  
10 working capital facility, a large portion of which is to fund  
11 the COD payments of inventory from Ashley.

12 THE COURT: And Ashley is being paid cash on delivery,  
13 right?

14 MS. NADRITCH: Correct, Your Honor. So under that  
15 facility, the only assets of Hartsdale being encumbered is the  
16 inventory to be purchased from Ashley which is the money being  
17 used to fund that.

18 MR. FOX: Thank you to Ms. Nadritch. And then the  
19 final point of where we just don't have any clarity, is on  
20 paragraph 4, Your Honor, where we're not sure that it had --  
21 Ashley had taken a position almost like it's an ipso facto  
22 clause that we have to pay all obligations on pre-petition  
23 claims regardless of a plan that may find that contrary. I  
24 think that's a legal argument that we'll reserve for later. If  
25 it's just on prospective basis then it's a feasibility issue

1 and certainly the testimony of the affidavit -- the  
2 declarations that we have in address that and we would turn  
3 over that -- Mr. Abada's the first witness -- for Ashley to  
4 cross.

5 THE COURT: All right.

6 MR. GOLDSTEIN: Your Honor, we're ready to start with  
7 cross-examination so --

8 THE COURT: All right.

9 MR. GOLDSTEIN: We'd ask Mr. Abada to take the stand.

10 THE COURT: All right. Mr. Abada?

11 THE CLERK: Please state your name for the record.

12 THE WITNESS: Rami Abada.

13 (Witness sworn)

14 THE CLERK: Please take a seat.

15 THE COURT: All right. We will accept then Mr.  
16 Abada's declaration as his direct testimony and any party who  
17 wishes may cross-examine and then if we need any redirect,  
18 we'll have an opportunity to redirect.

19 MR. FLEMING: Your Honor, we'd also like to move in  
20 the exhibits to Mr. Abada's declaration into evidence.

21 THE COURT: Any objection?

22 MR. GOLDSTEIN: Your Honor, could I reserve on that  
23 until the conclusion?

24 THE COURT: Well --

25 MR. GOLDSTEIN: I'd like to have the opportunity to

1 review those again and they came in late and I read this  
2 declaration several times but I don't think I'm going to have  
3 an objection to the exhibits but I'd like to have the  
4 opportunity to look at them.

5 THE COURT: Well, we'll look at them again then.

6 MR. GOLDSTEIN: Thank you, Your Honor. Your Honor, as  
7 a housekeeping matter, if I may procedurally -- in preparation  
8 and connection with their examination, we have binders of  
9 documents that we may be referring to and a set for the witness  
10 and a set for Your Honor, if we may approach?

11 THE COURT: You can give the witness a set, if you  
12 wish.

13 MR. GOLDSTEIN: We have given sets to counsel as well,  
14 Your Honor. Since I'll be referring to them, can we approach  
15 and give Your Honor a set as well?

16 THE COURT: All right.

17 MR. GOLDSTEIN: Thank you, Your Honor.

18 THE COURT: I'm not sure where you should put them  
19 either.

20 MR. GOLDSTEIN: If I may proceed, Your Honor?

21 THE COURT: Go ahead.

22 CROSS-EXAMINATION

23 BY MR. GOLDSTEIN:

24 Q. Good afternoon, Mr. Abada.

25 A. Good afternoon.

1 Q. Just to remind you, my name is Michael Goldstein. I'm  
2 with Greenberg Traurig. I represent Ashley HomeStores and  
3 Ashley Furniture. Before I begin examination, just a few terms  
4 I'd just like to get straight on the record so when I ask  
5 questions, you understand the terms I'm referring to and when  
6 you respond to my questions, hopefully you'll keep those in  
7 mind, okay?

8 A. Sure.

9 Q. These terms should be familiar to you since we talked  
10 about them in the deposition.

11 THE COURT: Why don't you get on with the examination?

12 MR. GOLDSTEIN: Yes, Your Honor.

13 THE COURT: If you want to ask him terms, if you want  
14 to set out terms, go ahead but get on with it.

15 Q. Mr. Abada, did Hartsdale have cash on hand on the petition  
16 date?

17 A. Yes.

18 Q. That -- how much cash did Hartsdale have on the petition  
19 date?

20 A. I don't recall the amount.

21 Q. That amount was not reflected on Hartsdale's schedules,  
22 was it?

23 A. Correct.

24 Q. Does an amount of appropriately 780,000 dollars sound  
25 about right to you; the amount that Hartsdale had in cash on

1 the petition date?

2 A. It's conceivable. I don't recall the number but it's  
3 conceivable.

4 Q. If I showed you the monthly corporate operating report  
5 that the debtor filed in this case and it showed the amount in  
6 the Ashley concentration account 780,000 dollars, would that  
7 refresh your recollection?

8 A. Yes.

9 MR. GOLDSTEIN: Your Honor, the corporate monthly  
10 operating report for the period July 18th 2010 to August 31,  
11 2010, dated September 24, 2010 is docket number 29 in this  
12 case. I would ask that the Court have the record reflect that  
13 that document was filed by the debtor and it shows, for the  
14 Ashley concentration account, an amount on July 18th, 2010,  
15 approximately 780,000 dollars.

16 THE COURT: All right. We'll take that subject to  
17 check. I can take judicial notice of that document.

18 MR. GOLDSTEIN: That document, Your Honor --

19 THE COURT: Go on.

20 MR. GOLDSTEIN: -- for purposes is binder -- is number  
21 14 in the binders -- the trial exhibits.

22 Q. Mr. Abada, all receipts from the Ashley segment are  
23 deposited to the Ashley concentration account, correct?

24 A. Yes.

25 Q. And money in the Ashley concentration account is used to

1 pay certain expenses of the Ashley segment but not all of them,  
2 correct?

3 A. That's correct.

4 Q. The Ashley segment expenses paid from the Ashley  
5 concentration account include payments to Ashley for  
6 merchandise, correct?

7 A. That's correct.

8 Q. And the Ashley segment expenses paid from the Ashley  
9 concentration account includes payments to customers for  
10 refunds, correct?

11 A. Correct.

12 Q. And the Ashley segment expenses paid from the Ashley  
13 concentration account include payments to landlords, correct?

14 A. Not correct.

15 Q. No landlords are paid from the Ashley concentration  
16 account?

17 A. They're not paid from the concentration account, no.

18 Q. The Ashley segment expenses paid from the Ashley  
19 concentration account includes payments to credit card  
20 companies, correct?

21 A. Fees. The fees to the credit card companies.

22 Q. Credit card fees?

23 A. Yes.

24 Q. The Ashley segment expenses paid from the Ashley  
25 concentration account do not include payments for rent then,

1 correct?

2 A. Correct.

3 Q. And the Ashley segment expenses paid from the Ashley  
4 concentration account do not include payments for utilities,  
5 correct?

6 A. Correct.

7 Q. And Ashley segment expenses paid from the -- that are not  
8 paid from the Ashley concentration account would include  
9 expenses for insurance, correct?

10 A. Correct.

11 Q. Okay. And the Ashley expenses that are not paid from the  
12 Ashley concentration account would include payments for  
13 employees, correct, at the corporate senior executive  
14 management level, correct?

15 A. Correct.

16 Q. Can from the Ashley concentration account, after payment  
17 of the Ashley segment expenses from that account is transferred  
18 to the Jennifer concentration account, correct?

19 A. Correct.

20 Q. And from the Jennifer concentration account, expenses of  
21 the Ashley segment are paid, right?

22 A. Correct.

23 Q. And the Ashley segment expenses paid from the Jennifer  
24 concentration account include rent, is that correct?

25 A. Yes.



1 Q. And Ashley segment expenses paid from the Jennifer  
2 concentration account include utilities?

3 A. Correct.

4 Q. And Ashley segment expenses paid from the Jennifer  
5 concentration account includes advertising, correct?

6 A. Yes.

7 Q. And Ashley expenses paid from the Jennifer concentration  
8 account include insurance, correct?

9 A. Correct.

10 Q. And Ashley segment expenses paid from the Jennifer  
11 concentration account include employees?

12 A. Correct.

13 Q. As a result, Mr. Abada, of the transfers of cash from the  
14 Ashley concentration account to the Jennifer concentration  
15 account, that creates an account receivable from Jennifer in  
16 favor of Hartsdale, doesn't it?

17 A. Correct.

18 Q. And, Mr. Abada, if you thought about the --

19 A. I'm sorry; can you repeat that question again?

20 Q. Okay.

21 A. The one I just answered. Say it again.

22 Q. Absolutely.

23 A. I'm sorry.

24 Q. The transfers from the Hartsdale -- excuse me. the  
25 transfers from the Ashley concentration account to the Jennifer

1 concentration account results in an account receivable from  
2 Jennifer in favor of Hartsdale, correct?

3 A. Correct, yes.

4 Q. And if one was to do an accounting of the total transfers  
5 from the Ashley concentration account to the Jennifer  
6 concentration account, that would result in the net receivable  
7 in favor of Hartsdale from Jennifer, correct?

8 A. Correct.

9 Q. And when I asked you in your deposition what that dollar  
10 amount was, you don't know -- you answered you don't know, is  
11 that correct?

12 A. The dollar amount? No, I didn't know.

13 Q. All right. And as you sit here today, you still don't  
14 know what that dollar amount is, correct?

15 A. We could look it up but I don't know off the top of my  
16 head, no.

17 Q. And you say you look it up, is there actually a schedule  
18 that you would look to that has been prepared that actually  
19 calculates the total receivable from Jennifer in favor of  
20 Hartsdale?

21 A. We have a balance sheet that has a due to and due from.

22 Q. And it's on that balance sheet?

23 A. Yes.

24 Q. And when was that balance sheet dated?

25 A. The most recent one, I believe, was first quarter or

1       fiscal 2011.

2       Q.    And that balance sheet of first quarter of 2011 was not --  
3       has not been provided to Ashley, has it?  Yes or no?

4       A.    No.

5       Q.    Mr. Abada, it's the debtors' custom and practice to  
6       maintain a balance in the Ashley concentration account, isn't  
7       it?

8       A.    Yes.

9       Q.    And historically or --

10               MR. GOLDSTEIN:  Strike that, Your Honor.

11       Q.    In July -- the period of July to August 2010, that average  
12       balance was in the neighborhood of 500,000 dollars, wasn't it?

13       A.    July to August 2010, I wouldn't know -- I wouldn't recall  
14       exactly.

15       Q.    Does that sound about right what that average balance is?  
16       Do you have a recollection of that?

17       A.    No.

18       Q.    Mr. Abada, do you know what the average balance in the  
19       Ashley concentration account would have been back in June -- in  
20       the period June 18th to August 18th, 2010?

21       A.    No.

22               MR. GOLDSTEIN:  Your Honor, for the record, I would  
23       just note, again, that the debtors' corporate monthly operating  
24       for the period July 18th, 2010 to August 31, 2010, which is  
25       docket number 29, Exhibit 14 in our trial book, shows for the

1 Ashley concentration account a ledger balance with a low of  
2 767,000 dollars and a high of a million-five.

3 Q. Mr. Abada, those numbers are substantially higher than  
4 100,000 dollars, aren't they?

5 MR. FLEMING: I'm sorry; I couldn't get the last  
6 question.

7 Q. Mr. Abada, those numbers I just stated are substantially  
8 higher than 100,000 --

9 A. Yes.

10 Q. -- dollars, aren't they? And the answer was?

11 A. Yes. Yes.

12 Q. Yes. Mr. Abada, I assume it's correct that you wouldn't  
13 know what the average balance in the Ashley concentration  
14 account would be for the period October 30, 2010 through  
15 November 26, 2010.

16 A. Don't recall.

17 MR. GOLDSTEIN: And Your Honor, just again, for the  
18 record -- I'm trying to be efficient here -- the corporate  
19 monthly operating report dated January 6, 2011, docket number  
20 421, trial Exhibit number 15, shows for the Ashley  
21 concentration account daily ledger balances that range from a  
22 low of 410,000 dollars to a high of 1,170,000 dollars.

23 MR. FLEMING: Your Honor, to the extent Mr. Goldstein  
24 wants to put in these financial things, he doesn't need to  
25 cross-examine Mr. Abada. These are, you know, records of

1 court.

2 THE COURT: It's all right. Let him do it his own  
3 way. What month though? Just tell me again. Now was that  
4 November-December -- the month of November?

5 MR. GOLDSTEIN: That was October 30th, 2010 to  
6 November 26th, 2010, Your Honor.

7 THE COURT: Appropriately November, 2010.

8 MR. GOLDSTEIN: Yes, Your Honor. And that was the  
9 last corporate monthly operating report filed.

10 THE COURT: All right.

11 BY MR. GOLDSTEIN:

12 Q. Mr. Abada, the schedule of assets and liabilities filed  
13 for Hartsdale in this case does not show an account receivable  
14 from Jennifer to Hartsdale, does it?

15 A. Correct.

16 MR. GOLDSTEIN: Can I just have a moment, Your Honor?  
17 I have to get a document.

18 THE COURT: Certainly.

19 (Pause)

20 MR. GOLDSTEIN: Your Honor, I just have a few  
21 questions I want to ask the witness about paragraph -- well,  
22 it's the conclusion, page 22 in our objection. A copy of  
23 that's not in the binder but I have a copy here if I may  
24 approach?

25 THE COURT: If you think it would be helpful to give

1 him a copy of that -- if there's any objection I can hear it.

2 MR. FLEMING: No objection, Your Honor.

3 THE COURT: All right.

4 MR. GOLDSTEIN: Thank you. Your Honor, I have an  
5 extra copy but I -- if you -- I assume you probably have one  
6 there.

7 THE COURT: No, I have one.

8 Q. Mr. Abada, if you would, I've handed you a copy of  
9 objection of Ashley HomeStores Ltd. and Ashley Furniture  
10 Industries, Inc., to confirmation of debtors' amended joint  
11 plan -- joint Chapter 11 plan of reorganization for Jennifer  
12 Convertibles, Inc. and its affiliated debtors. If you would,  
13 turn to page 22 of that document, please.

14 A. Okay.

15 Q. In particular, Mr. Abada, turn your attention to the  
16 seventh line where it starts -- towards the end of the line  
17 where it says (x) and the language after that says comply with  
18 the reporting, do you see that?

19 A. Yes.

20 Q. Okay. If you would just take a moment and just read  
21 subpart x if you will? And let me know when you're finished.

22 (Pause)

23 A. Okay.

24 Q. Mr. Abada, with that clause (x) in mind, on a go forward  
25 basis, can Hartsdale provide Ashley with historical, current

1 and ongoing annual and quarterly income statements, balance  
2 sheets and cash flow statements in accordance with generally  
3 accepted accounting principles?

4 A. Yes.

5 Q. And Mr. Abada, I want to make sure that you understand  
6 that that would include the accounting of intercompany  
7 transactions and allocations, you understand that?

8 A. Yes.

9 Q. And Hartsdale can do that on a go forward basis?

10 A. Yes.

11 Q. And it's Hartsdale's intention to do that on a go forward  
12 basis if it has the ability to assume the TUAs?

13 A. It's our intention to comply with the TUA.

14 Q. And you understand the TUA's reference to the trademark  
15 usage agreements --

16 A. Yes.

17 Q. -- that's the subject of the debtors' assumption motion?

18 A. Yes.

19 Q. Thank you. Mr. Abada, id the debtors -- can the debtors  
20 on a go forward basis provide historical, current and on going  
21 annual and quarterly store level four-wall income statements,  
22 balance sheets and cash flow statements for the Ashley stores?

23 A. Yes.

24 Q. And is it the debtors' intention, if it can assume the  
25 TUAs to provide historical, current on ongoing annual and

1 quarterly store level four-wall income statements, balance  
2 sheets and cash flow statements?

3 A. Yes.

4 Q. Mr. Abada, historically, the debtors have not prepared for  
5 Hartsdale income statements, balance sheets or cash flow  
6 statements that included a full accounting of intercompany  
7 transactions, isn't that correct?

8 A. To the best of my knowledge, we were requested to provide  
9 fiscal year-end numbers for Hartsdale, Inc. for the first time  
10 in last 2009 and that's when we provided Ashley, your client,  
11 with 2008 and 2009's financial information.

12 MR. GOLDSTEIN: Okay. Your Honor, I would ask that --  
13 it was non-responsive. The testimony doesn't have to be  
14 stricken, it can stand, but I have to ask the question again.

15 Q. Mr. Abada, I didn't ask you what Ashley requested. I  
16 asked you about Ashley's historical activities. My question to  
17 you has -- excuse me; Hartsdale historical activities. My  
18 question is had Hartsdale historically prepared income  
19 statements, balance sheets and financial statements --

20 MR. GOLDSTEIN: Strike that, Your Honor.

21 Q. Mr. Abada, isn't it true that historically, Hartsdale has  
22 not prepared income statements, balance sheets and cash flow  
23 statements that included a full accounting of all intercompany  
24 allocations? Is that correct?

25 A. That's correct.



1 (Pause)

2 MR. GOLDSTEIN: Your Honor, if we may approach the  
3 witness, I want to put in front of the witness a copy of one of  
4 the TUAs.

5 THE COURT: Go ahead.

6 MR. GOLDSTEIN: Thank you, Your Honor.

7 THE COURT: Thank you.

8 Q. Mr. Abada, you're familiar with the TUAs.

9 A. Yes.

10 Q. Right. And you've -- you've reviewed them in the past,  
11 correct?

12 A. Correct.

13 Q. Okay. We've handed you a copy of one of the TUAs. If you  
14 would turn to page 24, please -- I'm sorry; paragraph 24. It's  
15 the report section. It's on page 7 of the TUA itself.

16 MR. FLEMING: Could you just identify which of the  
17 date the TUA is and who that parties are? I mean, the locale?

18 MR. GOLDSTEIN: It's -- the TUA that we're looking at  
19 is the one for Carle Place, 168 Glen Cove Road, Carle Place.  
20 It's the same one that we looked at earlier.

21 MR. FLEMING: Okay. Thank you.

22 MR. GOLDSTEIN: Absolutely. Thanks for the  
23 clarification.

24 Q. Mr. Abada, you have, in front of you, page 7 of that TUA,  
25 paragraph 24?

1 A. Yes, I do.

2 Q. Mr. Abada, I want to turn your attention to the first  
3 sentence of paragraph 24. Nowhere in that first sentence on  
4 paragraph 24 on page 7 is there the word request, is there?

5 A. That's correct.

6 Q. In fact, that first sentence says that licensor will  
7 submit to licensor quarterly financial reports, correct?

8 A. That's correct.

9 Q. And I want to turn your attention to the second sentence  
10 in that paragraph. Do you have that in front of you?

11 A. Yes. Yes.

12 Q. And in that second sentence, nowhere will you find the  
13 word request, will you?

14 A. No.

15 Q. No. In fact, that sentence requires the licensee to  
16 provide annual financial statements, doesn't it?

17 A. Correct.

18 Q. And those statements are supposed to be in accordance with  
19 generally accepted accounting principles, correct?

20 A. Correct.

21 Q. And it's true -- it is the case --

22 MR. GOLDSTEIN: Strike that.

23 Q. Is it a fact, Mr. Abada, that generally accepted  
24 accounting principles would require a full accounting of  
25 intercompany transactions and overhead allocations?

1 MR. FLEMING: Objection, Your Honor; I'm not sure this  
2 witness is qualified to be an expert on what general accounting  
3 principles require.

4 MR. GOLDSTEIN: Your Honor, this witness comes before  
5 you with his declaration that says he is the president, the  
6 CFO, the CEO.

7 THE COURT: If the witness can answer the question, he  
8 can answer it; if he doesn't know, he can say he doesn't know.

9 MR. GOLDSTEIN: Thank you, Your Honor.

10 A. Can you ask the question again, please?

11 Q. Mr. Abada, isn't it correct that financial statement  
12 prepared in accordance with generally accepted accounting  
13 principles would require and accounting of intercompany  
14 transactions and an allocation of corporate overhead?

15 A. I believe yes.

16 Q. Mr. Abada, you, in your testimony previously, referred to  
17 financial statements that were prepared -- dated as of August  
18 '09 and were provided to Ashley. Do you recall that testimony?

19 A. Yes.

20 Q. Do you have those financial statements generally in mind  
21 or would it be helpful to refresh your recollection; I can show  
22 you a copy of them.

23 A. It would be helpful to see a copy of it.

24 Q. Mr. Abada, in front of you we've provided some trial  
25 binders. If you could turn to Tab 22, please.

1 A. Okay.

2 Q. You got hat in front of you, Mr. Abada?

3 A. Yes.

4 Q. Okay, if you would specifically direct your attention to  
5 the document marked AH-001 through AH-005. That's part of Tab  
6 22 in the Ashley trial exhibits.

7 A. Okay.

8 Q. Mr. Abada, were these the financial statements that you  
9 had in mind when you testified earlier that financial  
10 statements were provided to Ashley on or about -- with respect  
11 to August 2009?

12 A. Yes.

13 Q. Mr. Abada, were these statements prepared by an outside  
14 accountant?

15 A. No.

16 Q. Were they reviewed by an outside accountant?

17 A. Yes. I believe yes.

18 Q. Is there any indication on those documents that they were  
19 reviewed and signed off by an outside accountant?

20 A. No.

21 Q. Were these documents prepared in accordance with generally  
22 accepted accounting principles?

23 A. Yes.

24 Q. Mr. Abada, similar financial statements were not provided  
25 to Ashley for the fiscal year end August 2010, were they?

1 A. They were not pr -- no.

2 Q. Mr. Abada, you're -- continuing looking at the documents  
3 behind Tab 22, specifically AH-001, under August 29, '09  
4 column, there's an amount 1,151,827 dollars, do you see that?

5 A. Yes.

6 Q. And that amount it shows "due from company," is that  
7 correct?

8 A. Yes.

9 Q. And that's receivable from Jennifer Convertibles, correct?

10 A. Yes.

11 Q. For the period from the petition date until today or the  
12 end of the December 2010 monthly period, do you know what the  
13 due from Jennifer Convertibles is to Hartsdale?

14 A. No, I don't.

15 Q. No, you don't.

16 A. No, I would need to see --

17 Q. Has that amount been specifically put on a schedule that  
18 you've seen?

19 A. As I said earlier, we have a first quarter P&L -- internal  
20 P&L.

21 Q. Is that first quarter P&L break out pre-petition and post-  
22 petition transactions?

23 A. It's an up-to-date balance sheet.

24 Q. So the answer is no. Or you don't know?

25 A. It's up to -- I don't know. It's an up-to-date balance

1 sheet.

2 Q. Mr. Abada, if you would turn to the document that's marked  
3 Tab 17 in the binders. It's the debtors amended disclosure  
4 statement. Document number 398 for the record.

5 A. I have it.

6 Q. Do you have that document in front of you?

7 A. Yes.

8 Q. If you would turn to page 48 of that document. Do you  
9 have that in front of you?

10 A. Yes.

11 Q. Page 48? Okay. Specifically, draw your attention to  
12 subparagraph (b). It says the basis for substantive  
13 consolidation in the Chapter 11 cases. Do you see that  
14 section?

15 A. Yes, I do.

16 Q. Okay. And specifically I want to refer your attention to  
17 the next to last sentence. It's about five sentences up from  
18 the bottom. It says separate entity plans. Do you see that  
19 sentence?

20 A. Yes.

21 Q. Okay. If you would just take a moment and read that  
22 sentence to yourself.

23 A. Okay.

24 (Pause)

25 Q. Have you had a chance to read that one sentence, Mr.

1 Abada?

2 A. Yes.

3 Q. Mr. Abada, isn't it correct that when you -- let me step  
4 back. Mr. Abada, you signed this disclosure statement,  
5 correct?

6 A. Yes.

7 Q. And you reviewed this disclosure statement before it was  
8 filed, correct?

9 A. Several times, yes.

10 Q. And you believe the statements set forth in this  
11 disclosure statement are true and correct?

12 A. Yes.

13 Q. Yes. Thank you. Mr. Abada, when you -- turning back --  
14 turning your attention to page 48, subpa -- paragraph (b) that  
15 we looked at, when you used the word impossible in that  
16 sentence, you meant that you couldn't calculate to the penny,  
17 correct?

18 A. That's correct.

19 Q. That you couldn't get it perfect, correct?

20 A. Correct.

21 Q. That assumptions would have to be made, correct?

22 A. That's correct.

23 Q. And when you used the word difficult, that mean time and  
24 resources had to be undertaken to do the calculations, correct?

25 A. Yes.

1 Q. In fact, in August of 2009, that undertaking was done,  
2 wasn't it?

3 A. Yes. Slightly different. We only had two stores at that  
4 time versus the six now.

5 Q. But it was done, nonetheless?

6 A. Yes.

7 Q. And in fact, on a go forward basis, the allocations  
8 referred to in that sentence can be done, correct?

9 A. Allocations could be done.

10 (Pause)

11 Q. But Mr. Abada, does -- when you prepared the schedule on  
12 assets and liabilities for Hartsdale, those allocations were  
13 not done, correct?

14 A. When we prepared -- you're talking about the SOFA filing?

15 Q. Yes, correct.

16 A. That's correct.

17 Q. And that's why -- and so, for example, the SOFA filing for  
18 Hartsdale don't show a receivable from Jennifer to Hartsdale,,  
19 right?

20 A. Let me correct myself. We did not put all the assets on  
21 the SOFA filing for Hartsdale Convertible, Inc. --

22 Q. Thank you.

23 A. -- under the -- well,

24 Q. Go ahead. I'm sorry. I apologize. I didn't mean to cut  
25 you off.



1 A. Discussing it with our advisor and our counsel, it was  
2 much more -- it was deemed as a much more efficient way of  
3 making the filing was to put -- consolidate.

4 Q. So for efficiency purposes, you provided incomplete  
5 information, is that your testimony?

6 A. My testimony would be that I followed the direction of a  
7 counsel in putting the filings together.

8 Q. So you're blaming counsel for providing incomplete  
9 information?

10 A. I don't --

11 MR. FLEMING: Objection, Your Honor.

12 MR. GOLDSTEIN: Withdrawn.

13 THE COURT: Sustained.

14 MR. GOLDSTEIN: Withdrawn.

15 Q. The debtors' disclosure statement includes a liquidation  
16 analysis, is that correct?

17 A. Yes.

18 Q. And that liquidation analysis is done on a consolidated  
19 basis, correct?

20 A. Yes.

21 Q. The debtor has not provided, in its disclosure statement,  
22 a liquidation analysis for each individual debtor, has it?

23 A. That's correct.

24 Q. In fact, there is no liquidation for each individual  
25 debtor that has yet been filed in these cases, is that correct?

1 A. Not that I'm aware of.

2 Q. Have you done a liquidation analysis for Hartsdale?

3 A. Me, personally? No.

4 Q. Has anybody for the debtors prepared a liquidation  
5 analysis for Hartsdale?

6 A. No.

7 Q. Isn't it correct that Hartsdale did not file bankruptcy  
8 because it has any business or liquidity issues?

9 A. Hartsdale is part of JCI company --

10 Q. Mr. Abada, during your deposition I asked you if there was  
11 a business reason for Hartsdale filing Chapter 11. Do you  
12 recall what your testimony is?

13 A. I don't recall.

14 Q. You don't recall your testimony was that there was no  
15 business reason for filing Hartsdale and you filed it on advice  
16 of counsel?

17 A. I don't recall, no.

18 (Pause)

19 Q. If you would turn to page 20 of -- I'm sorry; Tab 20 of  
20 the binders, it's the deposition transcript for the deposition  
21 of Mr. Abada.

22 A. Okay.

23 Q. If you would turn to page 25 of that transcript. Mr.  
24 Abada, if you would, turn your attention to line 3 on page 25.  
25 See if this helps refresh your memory.

1 "Q. Did HCI have a particular liquidity problem, at the time,  
2 it needed to solve by filing for Chapter 11?

3 "A. Difficult to answer because the -- just viewed -- just  
4 view it as part of the entire company.

5 "Q. I want to focus on HCI specifically.

6 "MR. FLEMING: He's asking you specifically if you  
7 recall any of the specific issues at HCI so answer the best you  
8 can.

9 "A. At HCI, I wouldn't recall specifically any issue."

10 Does that help refresh your recollection, Mr. Abada?

11 A. Sure. I see it here now.

12 Q. So, in fact, HCI did not have a specific business reason  
13 for filing Chapter 11, did it? Yes or no?

14 A. I'm not so --

15 MR. FLEMING: Objection, Your Honor; the witness  
16 should be allowed to answer the question.

17 THE COURT: Sustained. It's not a yes or no question,  
18 necessarily.

19 MR. GOLDSTEIN: I apologize, Your Honor.

20 THE COURT: One can talk for three or four hours on  
21 the subject.

22 MR. GOLDSTEIN: One can talk and sometimes we like  
23 them to. I will refrain --

24 THE COURT: All right.

25 MR. GOLDSTEIN: -- in the future.

1 THE COURT: The witness can give you his best answer  
2 to the question.

3 A. My answer is simply that there was a, you know, a  
4 confluence of events that took place during that period of time  
5 that put the company in the position that it, unfortunately,  
6 was at and as a result, we were left no choice but to file for  
7 bankruptcy.

8 Q. And when you refer to the company in that answer, you're  
9 referring to the entire company, correct?

10 A. That's correct.

11 Q. Because, in fact, the Ashley segment is a profitable  
12 segment for the debtors, correct?

13 A. Yes.

14 Q. In fact, for calendar year 2010, the Ashley segment is the  
15 only profitable segment, correct?

16 A. Calendar year 2010?

17 Q. Calendar year 2010.

18 A. We haven't produced those numbers yet but I would believe  
19 that to be correct.

20 Q. Mr. Abada, you say you haven't produced numbers for  
21 calendar year 2010. Are you including in that testimony, you  
22 haven't prepared projections for calendar year 2010?

23 A. We don't work on a calendar year.

24 Q. I want to make sure we're clear about this Mr. Abada, the  
25 projections that are in the disclosure statement, they're

1 calendar year projections, correct?

2 A. That's correct.

3 Q. And they start at calendar year 2011, correct?

4 A. That's correct.

5 Q. So there's no calendar year 2010 numbers upon which the  
6 calendar year 2011 projections were based?

7 A. We worked on projections for the go forward company based  
8 on projected expenses, projected stores to be open, projected  
9 volumes. So we put together a calendar year projections under  
10 the assumption that we were going to be out, you know, and make  
11 projections based on a calendar year. But for historical  
12 purposes, for reporting purposes, we have a fiscal yearend of  
13 the last Saturday in August.

14 Q. So there's no calendar year 2010 projection or financial  
15 statement or combined actual and projected statement, is that  
16 correct?

17 A. Working closely with our financial advisors, we'd had many  
18 different projections throughout this period. We had rolling  
19 twenty-six month projections, thirteen week projections, weekly  
20 projections. We did not have a calendar year 2010 projections.

21 (Pause)

22 Q. Mr. Abada, if you would, I want you to just to turn to --  
23 back to the disclosure statement. It's Tab 17, page 91.

24 A. Okay. I'm there.

25 Q. Page 91. You're on that page?

1 A. Yes.

2 Q. So footnote 8 on page 91 says that all the projections are  
3 set forth in the disclosure statement based on calendar year,  
4 not the debtors' fiscal year, correct?

5 A. Yes.

6 Q. Okay. And footnote 17 says that the 2010 estimated EBITDA  
7 is not meaningful; meaningful defined as greater than zero,  
8 correct?

9 A. Footnote 17?

10 Q. I'm sorry; footnote 7.

11 A. Yes, that's what it says.

12 Q. So does that help refresh your recollection that for  
13 calendar year 2010, the debtors had no EBITDA?

14 A. I'd just like to reread that for a second.

15 (Pause)

16 A. I'm not sure what you're asking. Please ask me again.

17 Q. Based on footnote 7, which is language in your disclosure  
18 stmt hat you signed, is it not the case that that says that for  
19 calendar year 2010, estimated EBITDA is not meaningful, i.e.  
20 zero, isn't that what it says?

21 A. This is really unclear. It says 2010 EBITDA. It doesn't  
22 say for calendar or fiscal.

23 Q. Footnote 8 says that all the numbers are for calendar year  
24 not fiscal year, correct?

25 A. On a go forward basis, it's all on a calendar year.

1 You're asking me historically, correct?

2 Q. So this is -- so looking at page 91, footnote 7 and 8,  
3 that doesn't help refresh your recollection that for calendar  
4 year 2010 the debtors projections, indicated on an aggregate  
5 basis, that there would be not meaningful i.e. zero EBITDA?

6 A. I don't recall doing a 2010 calendar year projection.

7 Q. So then, as you sit here today, you don't know if, for  
8 calendar year 2010, whether the Jennifer segment was profitable  
9 or operated as a loss?

10 A. I know for the different periods that encompass 2010,  
11 except for December. That I know.

12 Q. Okay. So for what period of calendar year 2010 do you  
13 know what the Jennifer segments either profit or loss would be?

14 A. Well, I would have to look it up but we have financial  
15 reporting done through fiscal 2010, which is through August,  
16 and we also have published first quarter numbers which is  
17 September, October, November of 2010.

18 Q. So as the president, CFO and CEO of this company, you  
19 don't know, sitting here today, whether for calendar year 2010,  
20 the Jennifer segment operated at a profit or a loss?

21 A. I could make certain assumptions but we haven't put  
22 together any kind of numbers that go exactly from January  
23 through December of 2010.

24 Q. And if you made certain assumptions, what would your  
25 answer be?

1 A. That the -- specifically related to the Jennifer segment?

2 Q. Correct.

3 A. That it is not making money currently.

4 Q. Not making money.

5 A. That it didn't make money for that period.

6 Q. Yeah. So when I ask you that for calendar 2010, the only  
7 segment of the debtors' business making money is the Ashley  
8 segment, isn't that correct.

9 A. That would be correct.

10 Q. While we're on the subject of EBITDA, what -- if you  
11 would, in the -- we're still in the disclosure statement, Tab  
12 17. If you would turn to Exhibit C. It's towards the very end  
13 of the document, Mr. Abada and Your Honor. The pages are not  
14 sequentially numbered so I can't give you a page number but if  
15 you count backwards from the document --

16 THE COURT: Tab 17.

17 MR. GOLDSTEIN: It's the -- four or five pages back  
18 from --

19 THE WITNESS: From the end?

20 MR. GOLDSTEIN: Counting from the back. It's exhibit  
21 C.

22 THE COURT: Discounted cash flow analysis.

23 MR. GOLDSTEIN: That's correct.

24 THE COURT: All right.

25 Q. Let me know when you have that page, Mr. Abada?



1 A. I have it.

2 Q. Mr. Abada, for calendar year 2018, isn't it correct that  
3 the debtors project the EBITDA for the Jennifer segment being  
4 815,441 dollars?

5 A. That's correct.

6 Q. And that 815,441 dollar projected EBITDA in 2018 is a  
7 component of the total projected EBITDA of 6,859,250 dollars,  
8 correct?

9 A. Yes.

10 Q. Now, I don't know if you need a calculator but that would  
11 suggest that the EBITDA percentage of the Jennifer segment of  
12 the total company is roughly twelve percent, does that sound  
13 about right to you?

14 A. Okay. Yes.

15 Q. So, do you need to -- that amount sounds about right?

16 A. I'll go with it, yeah.

17 Q. When we look at this kind of cash flow analysis, the  
18 projected EBITDA for 2011 is 4,105,978 dollars, correct?

19 A. Projected EBITDA for 2011?

20 Q. Calendar year 2011. It's 4,105,978 dollars, correct?

21 A. One moment.

22 Q. You look under -- let me see if I can help you out here  
23 not to be difficult. By 2011, you see that column?

24 A. Yes. I see the column, yes.

25 Q. And you see EBITDA is the first line?

1 A. Yes. Okay.

2 Q. It's 4,105,900 --

3 A. Yes.

4 Q. Mr. Abada, you understand with the word "EBITDA" means,  
5 correct?

6 A. I think so, yeah.

7 Q. You think so or --

8 A. I understand it.

9 Q. Oh, okay. Thank you.

10 Mr. Abada, if we do some rough math, 12 percent of  
11 4,480,000 dollars sound about right?

12 A. Twelve percent of 4.1 million?

13 Q. Twelve percent of four million it's roughly, 408,000  
14 dollars, correct?

15 A. Yep.

16 Q. So, just to use round numbers to make it easy is it fair  
17 to say that for calendar year 2011 the debtors projected the  
18 Jennifer segment would do about 500,000 dollars in EBITDA?

19 A. Yes.

20 Q. Yes?

21 A. Yes.

22 Q. So, that, then, would suggest that the calendar year 2011  
23 EBITDA for the Ashley segment would be about 3.5 million  
24 dollars in round numbers?

25 A. Yes.

1 (Pause)

2 Q. Mr. Abada, if you would turn in the same binder tab 15?

3 This is the debtors' corporate monthly operating report for the  
4 period of 11/1 to 11/30, 2010.

5 A. Okay.

6 Q. You have that in front of you?

7 A. Yes.

8 Q. Okay. If you would turn to the fifth page, this page --  
9 it's the one that's marked on top "Statement of operations."  
10 You have that in front of you?

11 A. Yes, I do.

12 Q. Mr. Abada, is this correct that for the post-petition  
13 period from July 19, 2010 to November 27, 2010 the debtors had  
14 a loss from continuing operations of roughly five million  
15 dollars?

16 A. Yes.

17 Q. And it's fair to say that the loss from discontinued  
18 operations relates to the loss arising from the closed stores  
19 where you rejected leases? Is that correct?

20 A. Yes.

21 Q. And of that five million dollar loss that's shown there,  
22 approximately 850,000 dollars is related to restructuring cost,  
23 correct?

24 A. Yes.

25 Q. And restructuring costs include counsel and financial

1 advisors, committee and the other costs associated with this  
2 bankruptcy.

3 A. That's correct.

4 Q. Says it would be nonoperating type costs?

5 A. Correct.

6 Q. You would hope that you wouldn't incur those costs post-  
7 confirmation, correct?

8 A. That's correct.

9 Q. So, if we back out those costs from the income from -- or  
10 loss from continued operations that would suggest in round  
11 numbers a four million dollar loss before continuing operations  
12 for the period from July 19th through November 27th, is that  
13 correct?

14 A. Yes.

15 Q. Now, during that period, the Ashley segment is actually  
16 profitable, correct?

17 A. Yes.

18 Q. Because it's a profitable segment?

19 A. It is.

20 Q. And so, in calendar year 2010 we looked before and that  
21 suggested -- excuse me -- for calendar year 2011, that  
22 suggested the Ashley segment was -- had an EBITDA of  
23 approximately 3.5 million dollars, correct?

24 A. Okay. Yes.

25 Q. Roughly. That would be rough numbers 300,000 dollars a

1 month on average?

2 A. Doesn't work that way but it comes out to three and a half  
3 million dollars.

4 Q. Is that a close approximation for the mon --

5 A. Well, the seasonality with deliveries utility schedules,  
6 but it comes out to three and a half million for the year.

7 Q. So, what would the swing given --

8 A. I don't know.

9 Q. You don't know the seasonality swings for the Ashley --

10 A. I do but I can't break it out because --

11 Q. You can't give me -- I mean is it 500,000? Is it 200 --

12 A. There's a range. I can't give you that.

13 Q. Okay. So, of the four million dollar loss for the period  
14 of July 19th through November 27th, how much of that loss was  
15 offset by actual income that was gained on the Ashley segment  
16 for that period, roughly?

17 A. I'm uncertain.

18 Q. It's five months; you don't have that range of  
19 profitability for the Ashley segment for five months?

20 A. No.

21 Q. Could be -- is it --

22 A. I don't have a range. I don't know.

23 Q. Okay. Well, six months would be half a year, correct?

24 A. That's correct.

25 Q. And half of three and a half is about a million seven

1 fifty, correct?

2 A. Yes. It depends on shipping cycles and things of that  
3 nature as well.

4 Q. Would a range of a million to two million dollars be about  
5 right? Is that a fair range for that five month period? It's  
6 a pretty big range. Is that fair? Just trying to break this  
7 down.

8 A. I'm not certain.

9 Q. Let's estimate that the range -- that the high range of  
10 two million dollars. Is that at least -- would you agree  
11 that's a high range for a five month period for the  
12 profitability of the Ashley segment for this five month period?

13 A. That two million is a high range --

14 Q. Yes.

15 A. -- for that five month period? Possibly.

16 Q. Possibly.

17 A. Yeah.

18 Q. Okay. Would a million dollars possibly be a low range?

19 A. For that five month period?

20 Q. Yes.

21 A. As I said before, it really depends on shipping schedules.

22 Q. So, that four million dollar loss for that five month  
23 period, would you agree that the loss of the Jennifer segment  
24 was greater than four million dollars?

25 A. Yes.

1 Q. You don't know how much greater it would be because we  
2 don't know the offsetting income from the Ashley segment,  
3 correct?

4 A. We don't know how -- for that reason and we also don't  
5 know because we don't allocate corporate overhead at this  
6 point. So, they're not allocating proper corporate overhead  
7 for the Ashley segment.

8 Q. We have -- but the corporate overhead numbers are in --

9 A. They're in the --

10 Q. -- total order --

11 A. -- absolutely, yes.

12 Q. -- are in those number in the aggregate, right?

13 A. They're in the aggregate but as you know we don't allocate  
14 it for the Ashley segment because --

15 Q. Because you had allocated the corporate overhead that  
16 would mean that the profitability associated with the Ashley  
17 segment would be lower than if you don't allocate the corporate  
18 overhead. Is that correct?

19 A. No greater example than the 2018 model you asked me to  
20 take a look at a little while back that shows 6.8 million with  
21 Ashley, 800,000 without Ashley. The difficulty is that if we  
22 didn't take the time to allocate the corporate overhead.

23 Q. So, let's assume we allocated the corporate overhead and  
24 the profitability we actually send for this five month period  
25 was in the low range a million dollars. That would be suggest

1       that loss that Jennifer sent for this five month period was  
2       five million dollars, right?

3       A.    It would have -- if we allocated properly or if we took  
4       the time to allocate it it would have an effect on the profit  
5       of loss of both segments, most certainly, a month.

6       Q.    So, would you -- could you agree that the loss is the  
7       actually -- that the Jennifer segment for this five month  
8       period is around four million dollars?

9       A.    Yes.

10      Q.    And to be complete, when we say around four million  
11      dollars, it could be a million dollars lower or a million  
12      dollars higher. Is that correct?

13      A.    I'm not certain but it -- you know, again, I don't know  
14      because we didn't take the time to do all the allocations.

15      Q.    And so, you're generally familiar with your company's cost  
16      structure having been involved in this company for over -- at  
17      least over a decade if not more, correct?

18      A.    I used to be a lot more familiar than I am, have been the  
19      last four, five months because of all the issues associated  
20      with the bankruptcy. So, it's a little bit more difficult  
21      right now.

22      Q.    Let me see if I can put it this way. Would you agree with  
23      me that it's fair to say that for the five month period we were  
24      just looking at that the loss of the Jennifer segment is in the  
25      range of two to four million dollars?



1 A. Yes.

2 Q. And in calendar year -- in the entire calendar year 2011,  
3 the Jennifer segment will earn approximately 500,000 dollars in  
4 EBITDA, correct?

5 A. Whatever specifically we put in projections are what I  
6 believe should happen.

7 Q. Mr. Abada, you agree that the U.S. economy has not fully  
8 recovered from the recession, wouldn't you?

9 A. I would agree with that.

10 Q. You would also agree that the housing market remains  
11 stalled, correct?

12 MR. FLEMING: Objection, Your Honor. I don't know if  
13 this witness is an expert on housing or the U.S. economy  
14 generally.

15 MR. GOLDSTEIN: Your Honor --

16 THE COURT: Overruled.

17 MR. GOLDSTEIN: Thank you, Your Honor.

18 Q. You can answer the question.

19 A. Please repeat the question again.

20 Q. I said, you agree that the housing market remains stalled?

21 A. From what I see it seems to be a recovery.

22 Q. See a recovery.

23 But you agree that the home furnishing market hasn't  
24 recovered, correct?

25 A. I wouldn't say that it's -- these are boom times but there

1 appears to be some evidence that things are improving.

2 Q. It hasn't fully recovered, right?

3 A. It's not fully recovered, that's correct.

4 Q. Similarly, you would agree that consumer lending hasn't  
5 fully recovered from the height before the financial crises,  
6 correct?

7 A. Yes, that's correct.

8 Q. In fact, credit scores for consumers remain historically  
9 low, correct?

10 A. From what I read and hear, yes.

11 Q. Mr. Abada, for calendar year 2011 actually sales were  
12 projected to increase 56.9 percent in calendar year 2010,  
13 correct?

14 A. Yes.

15 Q. And for calendar year 2011, Jennifer sales were projected  
16 to increase 8.6 percent from calendar year 2010, correct?

17 A. Correct.

18 Q. In calendar year 2011 versus 2010, the same-store sales  
19 were actually projected to increase five percent, correct?

20 A. Calendar year -- say that again.

21 Q. Calendar year 2011 versus calendar year 2010, the same-  
22 store sales for the Ashley segment projected to increase five  
23 percent, correct?

24 A. The Ashley segment?

25 Q. The Ashley segment.

1 A. I don't have the projections in front of me but if that's  
2 what they say, yes. Somebody have them to confirm that? The  
3 Jennifer segment, I believe, is five percent; comp stores.

4 Q. If you would take a look, tab 17 is the disclosure  
5 statement, Exhibit B is the projections. You have to look from  
6 the back. Okay. And look at the sum sheets, Mr. Abada, I  
7 think you are correct. So, the Jennifer same-store sales  
8 growth is approximately five percent?

9 A. I believe you asked me if it was Ashley was --

10 Q. I said it was Ashley and you thought it was Jennifer and  
11 you were correct. My mistake.

12 So for 2011 versus 2010, same-store sales for Jennifer  
13 projected to increase five percent.

14 A. Yes. What -- just what page -- that's correct but what  
15 page you looking on?

16 Q. Well, if you look at the projections for Exhibit B  
17 following the three schedules there are your revenue  
18 assumptions. So, you have to work your way from the back of  
19 the document.

20 A. It says --

21 Q. Six pages --

22 A. -- tab 17?

23 Q. -- tab 17.

24 MR. GOLDSTEIN: I didn't mean to turn to you. I had  
25 my notes, Your Honor, I apologize.

1 Q. Do you have that page?

2 A. Yes.

3 Q. Okay. Great. So, to be clear, so for calendar year 2011  
4 versus calendar 2010, same-store sales for Jennifer segment  
5 projected increase five percent, correct?

6 A. Yes.

7 Q. And for calendar year 2011 versus 2010, same-store sales  
8 for Ashley are projected to increase five percent, correct?

9 A. For Ashley, no, it says eight percent.

10 Q. Ashley's eight percent.

11 A. Yeah. That's wasn't a trick, right?

12 Q. That was a trick -- thank you. We're covered and we'll  
13 try and get through this quickly.

14 And thereafter, same-store sales for both segments of  
15 projected growth four percent a year, correct?

16 A. Yes.

17 Q. Okay. The 2011 growth in Ashley 56.9 percent projected  
18 increase, part of that comes from maturing stores in the Ashley  
19 segment, correct?

20 A. Not part, a huge chunk of it.

21 Q. A huge part of it.

22 A. Yes.

23 Q. Okay. So, four stores will generate approximately 15.75  
24 million in revenue. That's what you said, correct?

25 A. Yes.

1 Q. Okay. And the total stores in the Ashley segment are six  
2 stores, correct?

3 A. That's what it will be for 2011.

4 Q. Right. And the two other stores in the Ashley segment  
5 that are not part of your four returning stores, those are  
6 already matured stores?

7 A. Well, I wouldn't call them mature necessarily, but we've  
8 had one for three and a half years and one for, I guess, close  
9 to two seasons; two years.

10 Q. Now, the four stores you say will have approximately 5.75  
11 million of revenue. Is it fair to say that that would  
12 suggest --

13 A. 5.75?

14 Q. Fifteen; I'm sorry.

15 A. Okay.

16 Q. Approximately 15.75 million in revenue for the four  
17 stores.

18 A. Yes.

19 Q. So, rounding that suggests about four million per store in  
20 revenue. Does that sound about right for the Ashley segment?

21 A. Well, it's correct but it's low in comparison to the  
22 original two stores but that's correct. That's what it comes  
23 out to.

24 Q. Okay. What are the other two stores that are not in the  
25 six stores, what is their revenue, roughly?

1 A. I would say about twelve million; actually a little more  
2 than that but --

3 Q. So, for 2011 the Ashley segment has roughly twenty million  
4 dollars in revenue; calendar year 2011, is that about right?

5 A. I believe, actually, it's a little more than that.

6 Q. How much more?

7 A. I don't have the document in front of me but I believe you  
8 add up all the revenue components it probably it's getting  
9 close to about thirty million.

10 Q. Thirty million?

11 A. Yes.

12 Q. Okay. If you turn to the first page in the exhibit the  
13 projections, calendar year 2011 has total projected net revenue  
14 or net sales of eight-eight million, correct?

15 A. I just need to find it. I do know what that sales are but  
16 I need to find it first.

17 Q. Oh, sure.

18 A. Okay. I got the page.

19 Q. Right?

20 A. Yes.

21 Q. Okay. So, is it fair to say then about eighty-eight  
22 million dollars approximately thirty million represents Ashley  
23 segment sales and fifty-eight million represents Jennifer  
24 segment sales?

25 A. Yes.

1 Q. And, sir, just so I understand the context here, so that  
2 thirty-eight million in Ashley segment sales --

3 A. I didn't say thirty-eight million.

4 Q. I'm sorry; thirty million.

5 A. Yes.

6 Q. Thank you. That thirty million in Ashley segment sales  
7 generates roughly or we estimate at three and a half million  
8 dollars of EBITDA, right?

9 A. Yes.

10 Q. So, about a twelve percent EBITDA margin. Does that sound  
11 about right?

12 A. I'm going to say yes but again I want to remind you that  
13 that isn't with proper corporate overhead allocations.

14 Q. Okay. So, if you go into Exhibit C.

15 A. Okay.

16 Q. You look into 2018 EBITDA breakdown.

17 A. Yes.

18 Q. You're saying that EBITDA breakdown does not include  
19 corporate overhead allocations?

20 A. It does -- it does when you -- it does when you look at  
21 the Jennifer segment by itself. That has all the corporate  
22 overhead in it when we have the 815,000. We have not allocated  
23 corporate overhead to the Ashley segment for a variety of  
24 reasons. Most importantly, again, till fiscal 2010, we only  
25 had two stores. So, it was not a significant -- it wasn't a

1 significant reason to do that. And as you can imagine, we  
2 became distracted with a few other things as soon as fiscal  
3 2010 came about or while we were in the middle fiscal 2010.

4 Q. Okay. Let's -- I want to turn your attention to corporate  
5 overhead for a moment. Today were talking about terms that has  
6 to be allocated. Corporate overhead that has to be allocated  
7 include senior management, correct?

8 A. Yep. A part of it which we discussed in great detail in  
9 the deposition on Wednesday.

10 Q. So, that's roughly salaries of eight senior management,  
11 correct?

12 A. We have senior executives, yes. Yes. But that wouldn't  
13 be the only corporate allocation.

14 Q. What else would be the corporate allocation?

15 A. There's a whole garden variety of issues. Is there  
16 anything specifically you wanted me to address?

17 Q. I'm just focusing on senior executives at this point in  
18 time.

19 A. If it's senior executives and you're correct those eight  
20 or --

21 Q. Eight.

22 A. Yes. But that doesn't address, right --

23 Q. I don't -- I didn't mean to interrupt you, I just focus --  
24 I know that there's other components I'm going to ask you  
25 about.



1           The other components of corporate overhead that have to be  
2           allocated, for example, are employees who work in the  
3           warehouse, correct?

4           A.    The whole warehouse distribution operation would need an  
5           allocation.

6           Q.    One warehouse that services both segments, correct?

7           A.    We have two warehouses but only one services the Ashley  
8           operation.

9           Q.    Right. So, only that one would have to be allocated,  
10          correct?

11          A.    That's correct.

12          Q.    And you would have to also allocate employees who provide  
13          accounting functions, their services, correct?

14          A.    Accounting functions, customer service functions.

15          Q.    Right. And you have to also allocate employees who  
16          provide advertising -- who work in advertising for the company,  
17          correct?

18          A.    For specifically the purchasing of advertising time, yes.  
19          There are several others, I don't know if you care to go  
20          through them.

21          Q.    Sure. What are the other ones?

22          A.    Well, you haven't allocated the -- our ordering fees would  
23          be an example of an allocation.

24          Q.    Okay.

25          A.    Legal fees.

1 Q. Lease revenue would be pretty easy to allocate, wouldn't  
2 it?

3 A. Yes.

4 Q. All right. So, I take it, Mr. Abada, that we looked at  
5 the thirty million net sales for calendar year 2011. The  
6 EBITDA percentage -- the EBITDA --

7 MR. GOLDSTEIN: Strike that, Your Honor.

8 Q. Of the thirty million in sales in calendar year 2011 that  
9 you attribute to the Ashley segment, you believe that the  
10 EBITDA percentage on that is greater than three -- is greater  
11 than twelve percent?

12 A. I would need to sit down with my -- with proper  
13 allocations --

14 Q. Yes.

15 A. Is the question proper allocations? I would need to sit  
16 down with my team and take the time to go through it and answer  
17 that question.

18 Q. But after that proper allocation the Ashley segment would  
19 be profitable in calendar year 2011, correct?

20 A. It would be profitable.

21 Q. The Jennifer segment, however, would still be operating a  
22 loss or would it be profitable in calendar year 2011?

23 A. Hopefully profitable.

24 Q. But you don't know.

25 A. Again, I have to go same as the question before. I have

1 to go through the proper allocations.

2 Q. Mr. Abada, the growth and projections from calendar year  
3 2010 to 2011 is attributable in part to coming out of  
4 bankruptcy; correct?

5 A. That's one of the elements.

6 Q. And the growth from calendar year 2010 to 2011 is  
7 attributable in part to the company hopefully having a private  
8 label credit card in place; correct?

9 A. Yes.

10 Q. And, in fact, you testified at your deposition that you  
11 believe that a private label credit card will be in place soon  
12 after the plan's confirmed; correct?

13 A. That's correct.

14 Q. And that would be a good thing for the company; correct?

15 A. I think it's going to be a very, very good thing for the  
16 company, not a good thing.

17 Q. And part of the growth from calendar year 2010 to 2011 is  
18 attributable in part to having stable inventory supply;  
19 correct?

20 A. Yes.

21 Q. And part of the growth from calendar year 2010 to 2011 is  
22 attributable to management not being distracted from the  
23 bankruptcy; correct?

24 A. That's definitely; yes.

25 Q. And part of the growth from calendar year 2010 to 2011 is

1       attributable to the maturing stores in the Ashley segment you  
2       talked about earlier; correct?

3       A.     That's correct.

4       Q.     Mr. Abada, the growth from calendar year 2011 to 2012 is  
5       attributable in part to those same factors; correct?

6       A.     Yes.

7       Q.     In fact, I think you would agree that by 2012, you think  
8       you'll be hitting your stride or words to that effect?

9       A.     We'll certainly be hitting our stride better than 2011.

10      Q.     And from 2012 to 2013, is that growth also attributable to  
11     continuing to hit your stride?

12      A.     A combination of factors; that would be one of them.

13      Q.     What are the other factors?

14      A.     Just a more seasoned management, in terms of having fully  
15     figured out how to work with a smaller company with a smaller  
16     footprint. Instead of being in twenty states, we'll be in  
17     significantly less; I think it's four or five states. That  
18     will be a big factor. There's a lot of elements that given the  
19     next eighteen to twenty-four months, we will figure out how to  
20     really take advantage of being a much more streamlined  
21     organization.

22      Q.     So by the end of calendar year 2013, three full calendar  
23     years you think you'll finally be hitting your stride and  
24     management will have that figured out?

25      A.     Well hopefully we're continuing to improve every year and

1 getting more and more intelligent in how you operate the  
2 business. But I think once you get into 2013, there are other  
3 factors, as well --

4 Q. You're getting --

5 A. -- besides hitting our stride.

6 Q. One of those factors will be inflation; is that correct?

7 A. That could be a factor; sure.

8 Q. Yes. And I think also in your deposition, you said one of  
9 those factors would be support from your plan sponsor; is that  
10 correct?

11 A. Uh-huh.

12 Q. Any other factors besides those two that are going to help  
13 the company in 2013?

14 A. Well I am not a clairvoyant but I would expect and  
15 hopefully -- I would think a lot of people expect that the  
16 economy should certainly be better in 2013 than it is right  
17 now.

18 Q. Or it could be worse.

19 A. It could be.

20 Q. In fact, your projections from 2011 through 2018 are a  
21 constant, ever-rising slope; aren't they?

22 A. Yes.

23 MR. GOLDSTEIN: I am trying to go through this very  
24 quickly, Your Honor, and I'm -- actually have just two or three  
25 sections left. I didn't know if Your Honor or the witness or

1 anybody wanted to take a break. I actually tend to get  
2 absorbed in this and I tend to lose track of time. But I think  
3 we've probably been at this an hour --

4 THE COURT: An hour, an hour and a quarter.

5 MR. GOLDSTEIN: An hour and a quarter and I just  
6 wanted to be sensitive to the parties and the witness. I'm  
7 happy to --

8 THE COURT: Do you want to take a five --

9 MR. GOLDSTEIN: I'm happy to plod through another  
10 hour plus or minus, but if people want to take a five minute  
11 break, I just wanted to raise the issue as a matter of  
12 courtesy.

13 THE COURT: Well if it's going to be another hour or  
14 more, maybe we'll take a five minute break. Please don't  
15 discuss your testimony with anyone during the break. We'll  
16 take a five minute break which usually means ten minutes.

17 THE WITNESS: Okay.

18 THE COURT: But let's be back in ten minutes.

19 MR. GOLDSTEIN: Thank you, Your Honor.

20 (Recess from 3:08 p.m. until 3:37 p.m.)

21 THE COURT: Please be seated. Mr. Abada, please  
22 resume the stand. You're still under oath. Continued cross-  
23 examination.

24 MR. GOLDSTEIN: Thank you, Your Honor.

25 Q. Mr. Abada, would you turn to Exhibit 9 in the trial

1 binders please? Exhibit 9 is a letter from my colleague, Mr.  
2 Schultz to Mr. Fox. Mr. Abada, you've seen this letter before;  
3 haven't you?

4 A. I believe I saw this on -- last Wednesday.

5 Q. And before last Wednesday, you saw it around the time it  
6 was dated; correct?

7 A. I don't recall.

8 Q. On your deposition, you testified you were familiar with  
9 the information requested in the letter; correct?

10 A. Let me take a look at it then.

11 Q. Absolutely.

12 A. I haven't read the whole document but I -- okay.

13 Q. You've familiarized yourself with the letter now; is that  
14 correct?

15 A. Yes.

16 Q. And you were generally -- you were aware of this letter on  
17 around the date it bears October 7 -- August 17, 2010; is that  
18 correct?

19 A. I really don't recall.

20 Q. You were generally aware of this letter before last  
21 Wednesday though; isn't that correct?

22 A. I think so.

23 MR. FLEMING: Your Honor, I'd like to assert an  
24 objection. This is a letter between counsel talking about a  
25 cooperative effort and request materials and engage in informal

1 discovery. I don't know what relevance it has to this witness  
2 or any testimony we're hearing today. If somebody wanted  
3 discovery, they could have served a formal request. They  
4 didn't.

5 THE COURT: Well, we'll find out --

6 MR. FLEMING: Okay.

7 THE COURT: -- perhaps in due course.

8 MR. GOLDSTEIN: Thank you, Your Honor.

9 Q. Mr. Abada, you were aware, weren't you, before last  
10 Wednesday, that Ashley had requested information from the  
11 debtors regarding financial information?

12 A. Yes.

13 Q. And you also know, isn't it true, that the debtors did not  
14 find the financial information that was requested in this  
15 letter; is that correct?

16 MR. FLEMING: Objection, Your Honor.

17 MR. GOLDSTEIN: Your Honor?

18 THE COURT: Overruled.

19 MR. GOLDSTEIN: Thank you.

20 A. Looking at it now, I could say yes.

21 Q. Yes, you are aware that the debtors did not provide this  
22 information; correct?

23 A. That we have not provided the information that's on here;  
24 not all of it.

25 Q. Mr. Abada, you're familiar with the TUAs; correct?



1 A. Yes.

2 Q. And you have one of the TUAs at the witness stand?

3 A. Yes.

4 Q. The one that deals with --

5 A. That's the November 6, 2006.

6 Q. The Cove Road, Carlisle Place TUA; correct?

7 A. That's correct.

8 Q. Okay.

9 A. November 6, 2006.

10 Q. Okay. Mr. Abada, the debtors intend to comply with  
11 Ashley's rules and policies regarding customer service;  
12 correct?

13 A. Most certainly.

14 Q. And the debtors intend or Hartsdale intends to comply with  
15 the requirements to operate and maintain, upgrade its hardware  
16 and software system; correct?

17 A. Yes.

18 Q. And Hartsdale intends to comply with its obligations to  
19 buy product to maintain sufficient product to generate customer  
20 sales; correct?

21 A. Yes.

22 Q. Hartsdale intends to use its best efforts to promote the  
23 sales of Ashley's products and consult with Ashley regarding  
24 sales goals and marketing objectives; correct?

25 A. Yes.

1 Q. And it would be Ashley's intention to attempt to achieve  
2 those sales goals and marketing objectives; correct?

3 A. It would be Ashley, your client?

4 Q. I'm sorry, thank you. It is Hartsdale's goal and  
5 objective to meet those sales goals and marketing objectives;  
6 correct?

7 A. Of ours?

8 Q. Yes.

9 A. We have certain objectives and projections and most  
10 certainly that's our goal to hit them or to exceed them.

11 Q. And it would be Hartsdale's intention to maintain product  
12 inventory of accessories as required on the TUA; correct?

13 A. Yes.

14 Q. And it would be Hartsdale's intention to purchase  
15 accessories in accordance with the accessories list as set  
16 forth in TUAs; correct?

17 A. That's correct.

18 Q. Similarly, it will be Hartsdale's intention to comply with  
19 governing law; right?

20 A. Yes.

21 Q. And it would be --

22 A. Not because of the TUA, just in general.

23 Q. In general. And it would be Hartsdale's intention to  
24 comply with warranty requirements under the TUAs with respect  
25 to customers; correct?

1 A. Above and beyond, naturally.

2 Q. Okay. Mr. Abada, to do all the things you just described  
3 will require Hartsdale to spend money; won't it?

4 A. Some of the items; yes.

5 Q. Yes. And to the extent Hartsdale doesn't have money in  
6 the Ashley concentration account to pay for those items, it's  
7 going to have to get that money from Jennifer; correct?

8 A. Yes. It depends on the item, let me correct myself. If  
9 it's merchandise, it comes out of the Hartsdale account,  
10 accessories and things of that nature.

11 Q. Okay. But to the extent it's not -- okay. So some items  
12 Hartsdale would pay for directly out of the Ashley  
13 concentration account; right?

14 A. That's correct; yes.

15 Q. If the balance in the Hartsdale Ashley concentration  
16 account is managed to one hundred thousand dollars, and to the  
17 extent Hartsdale needed more than one hundred thousand dollars,  
18 it would need to get that money from Jennifer; correct?

19 A. The commitment was to have a minimum of a hundred thousand  
20 dollars in the account. So I --

21 Q. So it --

22 A. It depends on -- it would depend on a point in time.

23 Q. Right. So to the extent that there was not more than a  
24 hundred thousand dollars in the account --

25 A. If there was no more than a hundred thousand dollars in

1 the account and --

2 Q. And Hartsdale had to pay expenses --

3 A. It depends on the expenses. Some of the accessory  
4 vendors, it could be a two thousand dollar invoice. It'd be  
5 fine.

6 Q. And if the invoice or the aggregate expenses were greater  
7 than a hundred thousand dollars, and there was only a hundred  
8 thousand dollars in the Hartsdale Ashley concentration account,  
9 then Hartsdale would need to get that money from Jennifer;  
10 correct?

11 A. That's correct.

12 Q. Yeah, okay. Mr. Abada, I turn your attention, it's still  
13 in the TUA at paragraph 4, the fourth paragraph under paragraph  
14 4. The one that starts --

15 A. What page?

16 Q. Page -- it's page 2 of the TUA.

17 A. Okay.

18 Q. It's paragraph 4.

19 A. Okay.

20 Q. It's the one --

21 A. Should I read it?

22 Q. It is the fourth paragraph. It starts "Licensee and  
23 operating a licensed business." Do you see that paragraph?

24 A. "Licensee will operate the licensed business." Is that  
25 the paragraph?

1 Q. Uh-huh.

2 A. Okay. Let me read it.

3 Q. Yup.

4 A. Okay.

5 Q. Okay. Mr. Abada, there are parties other than Ashley with  
6 whom Hartsdale does business; correct?

7 A. Yes.

8 Q. And certain of those parties that Hartsdale does business  
9 were owed money as of the petition date; correct?

10 A. That's correct.

11 Q. And under the debtors' proposed Chapter 11 Bankruptcy  
12 plan, certain of those parties who were owed money as of the  
13 petition date by Hartsdale will not be paid in full; will they?

14 A. Correct; no. I want to -- can I go back to that for one  
15 moment?

16 MR. GOLDSTEIN: Your Honor, I'm fine with that.

17 A. Okay. Some of the landlords of -- we've negotiated new  
18 lease agreements with. Now there were -- there were a few  
19 other vendors I guess that are not getting -- not being made  
20 whole, okay; yes.

21 Q. Mr. Abada, you don't know dollar amount what those parties  
22 who did business with Hartsdale who were owed money as of the  
23 petition date who won't be paid in full under the plan would  
24 aggregate to; do you?

25 A. Beyond what we've disclosed in our statements; no.

1 Q. But we know it's not Ashley because Ashley's going to get  
2 cured if the assumption's approved; correct?

3 A. Ashley?

4 Q. Ashley would not be one of those parties who is not being  
5 paid if the TUAs are assumed and Ashley --

6 A. The 980 thousand that we reconciled.

7 Q. Right. They're not in that list.

8 A. That's correct.

9 Q. And the landlord who you -- whose current leases the  
10 debtors' assuming in the arrearages are cured or there's  
11 modifications, they're being taken care of; correct?

12 A. We've worked out new arrangements with them; correct.

13 Q. So I am just -- in terms of the universe of people we're  
14 talking about, we're talking about merchandise vendors other  
15 than Ashley, correct, would be one group?

16 A. Yes.

17 Q. And it would be vendors of other expenses to the stores  
18 that otherwise aren't being paid; correct?

19 A. It could be some others.

20 Q. So advertising, for example, could be one.

21 A. Could be.

22 Q. Insurance could be one.

23 A. Unlikely but maybe.

24 Q. But it's a fairly well-defined universe of parties who've  
25 fallen into this category, wouldn't you agree, of parties who

1 claimed as of the petition date against Hartsdale are not going  
2 to get paid in full under the plan; isn't that right?

3 A. Again, whatever we put in our disclosure statements.

4 THE COURT: Well, while we're on this subject, let me  
5 ask a question. You're paying Ashley a cure amount which has  
6 been, I think, represented to be in the range of not quite a  
7 million dollars. Ashley may want a little bit more but that  
8 issue is being I think held open. I think the amount that was  
9 stated earlier today was eight hundred.

10 THE WITNESS: Nine-eighty.

11 THE COURT: Nine-eighty. Oh, just almost -- and then  
12 I was right, almost a million dollars. Is that 980 thousand  
13 dollars coming from a separate Ashley cash account that exists  
14 today?

15 THE WITNESS: We've been paying Ashley out of the  
16 Ashley concentration account. I'm not certain if at the time  
17 of exit if that would be coming out of that account or if it  
18 would be coming out of exit financing.

19 THE COURT: The exit financing.

20 THE WITNESS: Yeah.

21 THE COURT: So it may be that in order to get the  
22 exit financing to pay Ashley almost a million dollars, you have  
23 to access exit financing or go to Jennifer and Jennifer's  
24 credit and or the credit of the entire enterprise in order to  
25 pay Ashley the cure amount; is that correct?

1 THE WITNESS: Yeah. I'm fairly certain it wouldn't  
2 be coming out of the Ashley concentration account.

3 THE COURT: If it did, it would probably use up that  
4 entire account and there would be nothing left in order to keep  
5 the company --

6 THE WITNESS: Yes.

7 THE COURT: -- in business. It would have to be  
8 replenished.

9 THE WITNESS: Yes.

10 THE COURT: All right. Now there's been much talk  
11 about the Ashley intercompany claim against Jennifer as of the  
12 petition date. Do you recall that questioning?

13 THE WITNESS: Yes.

14 THE COURT: Do you have any idea as you sit here  
15 today what that intercompany claim would be worth in terms of  
16 an actual ability of Ashley to recover on a claim against  
17 Jennifer?

18 THE WITNESS: I'm not certain as to what the number  
19 is. The primary reason that it would -- we've always run the  
20 company as -- from a cash management point of view, it's one  
21 entity and didn't really -- where the money was coming from to  
22 pay different vendors was not the -- not a critical issue for  
23 us to focus on.

24 THE COURT: But are Jennifer creditors being paid in  
25 full under the plan?



1 THE WITNESS: Not all Jennifer creditors.

2 THE COURT: No, general unsecured creditors, they're  
3 not being paid in full.

4 THE WITNESS: That's correct.

5 THE COURT: About what percentage does the disclosure  
6 statement project as a payment to the Jennifer creditors?

7 THE WITNESS: I believe when you include the equity,  
8 it's somewhere in the area of twenty-two percent.

9 THE COURT: Twenty-two percent.

10 THE WITNESS: I believe.

11 THE COURT: So if Ashley had an intercompany claim  
12 against Jennifer, could I presume that that claim might be  
13 worth over time twenty-two percent?

14 THE WITNESS: Uhm.

15 THE COURT: Well, I guess it would be diluted because  
16 if that claim were paid, everybody would get less.

17 THE WITNESS: I would think so, but I would go by  
18 what you say.

19 THE COURT: No, I am asking questions. I'm not  
20 making any statements.

21 THE WITNESS: Yes, I would say -- yes, I would --

22 THE COURT: All right.

23 THE WITNESS: It would stand to reason that more  
24 people in the pot would dilute the pot from the existing  
25 potholders.

1 THE COURT: All right. Thank you. Obviously anyone  
2 can ask questions based on my questions and they can always  
3 object if they don't like the question.

4 MR. FOX: Not if they're smart.

5 THE COURT: Go ahead, counsel.

6 MR. GOLDSTEIN: Thank you, Your Honor. I would note  
7 for the record in tab 15, the corporate monthly operating  
8 report for the period November 1 to November 30, 2010, shows  
9 for the Ashley concentration account, a cash balance of 2.1  
10 million dollars.

11 MR. FLEMING: Okay. What page are you on? I didn't  
12 get that.

13 MR. GOLDSTEIN: It is tab 15.

14 MR. FLEMING: Right.

15 MR. GOLDSTEIN: It's the corporate monthly operating  
16 report for the period 11/1 to 11/30.

17 Q. The second page of that document starts -- there's a  
18 spreadsheet of that document that has all the cash accounts set  
19 forth and if the -- the Ashley concentration account shows a  
20 balance of 2.1 million dollars.

21 A. We talked before about seasonality. That came right after  
22 Black Friday where we have significant volume for that weekend.  
23 So it's conceivable that that played a role in the buildup of  
24 the cash at that point in time.

25 Q. So you think maybe the two million dollars when taken out

1 of the Ashley concentration account is now sitting in the hands  
2 of Jennifer?

3 A. I don't know.

4 Q. You don't know.

5 A. No.

6 Q. Okay. That's it. Mr. Abada, you're familiar with the  
7 secured exit financing that's being provided by the plan  
8 sponsor under the plan?

9 A. Yes.

10 Q. And you're familiar that that facility has two components,  
11 a letter of credit facility and a cash facility?

12 A. Yes, yeah.

13 Q. What's your understanding of the cash facility?

14 A. Cash facility, the tranche E note should be approximately  
15 in the area of 2.6, 2.7 million dollars.

16 Q. And that dollar amount is to refinance the protected  
17 balance on the DIP loan from the plan sponsor; is that correct?

18 A. And to just generally help in the exiting of bankruptcy  
19 and making sure the company hits all its commitments.

20 Q. And that 2.7 million dollar balance is projected -- is  
21 that the projected balance as a result of the company's  
22 operating in the ordinary course of business or does that  
23 include projected payments as of the effective date of the  
24 plan?

25 A. The 2.6, 2.7 million dollars is based on what's projected

1 in the CIA account with the payments that have gone to Mengnu  
2 during the bankruptcy.

3 Q. So it doesn't include the payments that will be required  
4 to be made on the effective date of the plan; right?

5 A. We're going to use that money to pay things that are due  
6 on the effective date. In fact, a significant amount of that  
7 is -- was probably going to be earmarked for curing the Ashley  
8 980 thousand dollars.

9 Q. So that CIA account is actually cash that's sitting in  
10 that account?

11 A. Yes.

12 Q. And what account is that?

13 A. I don't know the account.

14 Q. Is that a Jennifer concentration account?

15 A. No, no, that's an account that the trustee has in his  
16 account. We don't have access to it.

17 Q. And you project that the full amount of that 2.6 million  
18 dollars in that account will be used to fund payments that are  
19 due on the effective date?

20 A. Not necessarily the full amount but a significant portion  
21 of it.

22 Q. Do you know how much?

23 A. I don't know.

24 Q. Your declaration in support of confirmation didn't attach  
25 the sources and use of cash as of the effective date; did it?

1 A. I'm not certain.

2 Q. Have you -- if the balance in that CIA account that you  
3 just discussed is fully used, will that be the end of the  
4 credit available under the cash facility?

5 A. As you said before, there are several components. One is  
6 the CIA account or the cash account. We also have the -- which  
7 is the tranche E note and then we also have the LOC when we  
8 exit up to five million dollars.

9 Q. And the letter of credit is to backstop credit card  
10 reserves; correct?

11 A. That's primarily what it's for.

12 Q. It's not to pay to fund general operating expenses of the  
13 debtors; is it?

14 A. It's available to also help to put together a private  
15 label card program. We're going to need to backstop that with  
16 an LLC.

17 Q. So to backstop credit card reserves again; correct?

18 A. Yeah -- well it's not a credit card reserve but it's to  
19 allow us to get into the private label card business.

20 Q. Okay. But the letter of credit is not something that the  
21 reorganized company will be able to draw upon to pay expenses  
22 in the ordinary course of business; is it?

23 A. It would depend on Mengnu. We would make a request for  
24 the LLC to go as high as five million dollars and it could be  
25 used to go towards American Express.

1 Q. So you would have to make the request to Mengnu. It's not  
2 provided for in the documents presently; correct?

3 A. To go up to five million; correct.

4 Q. So in addition to the letter of credit and the cash in the  
5 account, the 2.6, 2.7 million dollars, is there any other  
6 working capital being provided under the exit credit facility  
7 to your understanding?

8 A. Well, we received a half a million dollars of working  
9 capital out of that CIA account, as part of DIP financing, not  
10 too long ago. And another key component would be that we will  
11 be going to ninety days receipt of good on all Mengnu shipments  
12 as soon as we exit. And what's critical to note on that is  
13 that it's ninety days receipt of goods in the warehouse which  
14 really translates into 120, 125 days if you include the time on  
15 the water.

16 Q. That's credit financing for purchasing supplies from  
17 Mengnu; correct?

18 A. Well, to me it's money because we don't have to pay on any  
19 goods received for the first ninety days that we come out of  
20 bankruptcy.

21 Q. With respect to other accesses to cash, is there any other  
22 working capital facility or financial commitments being  
23 provided to the debtor that the debtors can rely on post-  
24 confirmation that you're aware of?

25 A. No.

1 Q. No. Mr. Abada, you have in front of you still the copy of  
2 the TUA that we were looking at earlier --

3 A. Yes.

4 Q. -- for the Carle Place. If you would turn to paragraph  
5 37.

6 A. The page at the bottom?

7 Q. Page 11.

8 A. Okay.

9 Q. To date, Hartsdale's been operating the Ashley stores  
10 under the TUAs without representatives of Mengnu being part of  
11 management; correct?

12 A. That's correct.

13 MR. GOLDSTEIN: Your Honor, if I could have just a  
14 few minutes to gather my thoughts, I think I may actually be  
15 done or very close to done.

16 THE COURT: All right.

17 MR. GOLDSTEIN: I don't think we need to take a break  
18 but if I could just pause for a minute at counsel table, I'd  
19 appreciate it.

20 THE COURT: That's perfectly fine.

21 MR. GOLDSTEIN: Thank you, Your Honor.

22 (Pause)

23 MR. GOLDSTEIN: Your Honor, I don't have any further  
24 questions at this time. If plaintiffs intend or if the debtors  
25 intend to do any redirect, I reserve the right to do recross.

1 THE COURT: Surely. All right. Any redirect or --

2 MR. FLEMING: Just thirty -- I won't say thirty  
3 seconds because it won't be thirty seconds but probably three  
4 minutes if I could, Your Honor.

5 THE COURT: All right.

6 MR. FLEMING: And the first thing I wanted to do was  
7 to offer into evidence the --

8 THE COURT: The first thing you should do is state  
9 your name for the record.

10 MR. FLEMING: Oh, sorry, Your Honor. Thomas Fleming,  
11 counsel for the debtors.

12 THE COURT: All right.

13 MR. FLEMING: From Olshan Grundman.

14 THE COURT: All right.

15 MR. FLEMING: I just want to move into evidence the  
16 exhibits to Mr. Abada's declaration.

17 THE COURT: All right. Now I read Mr. Abada's  
18 declaration but tell me where it appears in your three volumes,  
19 so I have it, unless I have taken it out.

20 MR. FLEMING: I have it --

21 THE COURT: What tab -- what volume is it in?

22 MR. FLEMING: I have this one which --

23 THE COURT: I think you should consult with the  
24 person --

25 MR. FLEMING: Yes, do you know which of these binders



1       it's in?

2               THE COURT:   What binder is it in?   It's in the index  
3       but --

4               MS. NADRITCH:   No, no, no, it's in the original.  
5       It's in binder number -- no, no, no.   It's in binder number 2,  
6       Your Honor.

7               THE COURT:   Binder number 2.   All right.

8               MS. NADRITCH:   Exhibit --

9               THE COURT:   Now hold on.   Hold on.   Hold on.

10              MS. NADRITCH:   Sure.

11              THE COURT:   Binder number 2.

12              MS. NADRITCH:   That we provided to Your Honor in  
13       connection with today's hearing, not from Ashley.

14              THE COURT:   All right.   And what tab?

15              MS. NADRITCH:   Tab -- I'm sorry?   Tab 4-E.

16              THE COURT:   4-E.

17              MS. NADRITCH:   I apologize, Your Honor.   I was just  
18       corrected.   It's binder 1.   I have an index here that says  
19       binder 2 but it's binder 1 and it's tab 4-E.

20              THE COURT:   All right.

21              MS. NADRITCH:   I apologize.

22              THE COURT:   Just hold on.   Hold on.   Slow down.   All  
23       right.   Binder 1 and what tab?

24              MS. NADRITCH:   It begins, Your Honor, on tab 4-E, I  
25       believe.

1 THE COURT: All right. Don't give me a number, just  
2 give me a letter. Tab E?

3 MS. NADRITCH: Well, 4 -- no, it's tab 4.

4 THE COURT: Tab --

5 MS. NADRITCH: And then letter E within tab 4.

6 THE COURT: All right. Hold on. All right. There  
7 it is. Okay. All right. Now, that's the Abada declaration.  
8 And now you're moving into evidence the exhibits.

9 MR. FLEMING: Right, Your Honor.

10 THE COURT: All right. Does counsel for Ashley have  
11 the -- the first exhibit is documents in the file with New York  
12 State; right?

13 MR. FLEMING: Yes, Your Honor. That's the first  
14 exhibit.

15 THE COURT: All right. That's pretty obvious stuff.  
16 Any objection?

17 MR. GOLDSTEIN: No objection, Your Honor.

18 THE COURT: All right.

19 (Certificate of good standing was received into evidence as  
20 Debtors' Exhibit A as of this date.)

21 THE COURT: All right. Let's go to Exhibit B.

22 MR. FLEMING: It's the certificate of incorporation  
23 from the Secretary of State.

24 THE COURT: Exhibit B?

25 MR. FLEMING: That's correct, Your Honor.

1 THE COURT: Any objection? I don't know that there  
2 could be.

3 MR. FLEMING: Exhibit C --

4 THE COURT: Hold on. Any objection?

5 MR. GOLDSTEIN: Your Honor, I would just --

6 THE COURT: I'm looking for --

7 MR. GOLDSTEIN: I was looking for it. I have A and I  
8 have C.

9 THE COURT: B.

10 MR. GOLDSTEIN: But I don't have B.

11 MS. NADRITCH: It's here. B is only one page.

12 THE COURT: B is one page and it's a --

13 MR. GOLDSTEIN: Oh, it's one page.

14 THE COURT: Got it.

15 MR. FLEMING: A is the certificate of good standing  
16 and B is the actual certificate of incorporation.

17 THE COURT: There is the -- all right. B is the  
18 certification of incorporation. Any objection?

19 MR. GOLDSTEIN: No objection, Your Honor.

20 THE COURT: All right.

21 (Certification of Incorporation was received into evidence as  
22 Debtors' Exhibit B as of this date.)

23 THE COURT: Exhibit C is the TUA that we've been  
24 talking about all day.

25 MR. FLEMING: Correct.

1 THE COURT: Any objection?

2 MR. GOLDSTEIN: No, no objection, Your Honor.

3 THE COURT: It's the Carle Place one; right?

4 (Carle Place TUA was received into evidence as Debtors' Exhibit  
5 C as of this date.)

6 MR. FLEMING: And Exhibits D through I are all the  
7 other TUAs for the other locations.

8 THE COURT: Any objections?

9 MR. GOLDSTEIN: No objection, Your Honor.

10 THE COURT: All right.

11 (TUAs were received into evidence as Debtors' Exhibit D, E, F,  
12 G, H, and I as of this date.)

13 MR. FLEMING: And Exhibit J is the financial  
14 statement that was marked on cross, that Hartsdale provided to  
15 Ashley in December 2009.

16 THE COURT: Any objection?

17 MR. GOLDSTEIN: No objection, Your Honor.

18 THE COURT: All right. That will be admitted and I  
19 assume the document that you -- well it's in now as Exhibit --  
20 as part of these exhibits.

21 (Financial statement Hartsdale provided to Ashley in December  
22 2009 was received into evidence as Debtors' Exhibit J as of  
23 this date.)

24 MR. GOLDSTEIN: I assume I'll have the opportunity,  
25 Your Honor, we would mark the exhibits I referred to in

1 cross --

2 THE COURT: Well, we could go through them --

3 MR. GOLDSTEIN: We'll get to them, yeah.

4 THE COURT: -- one by one at some point. We don't  
5 have to do that right now. All right. Mr. Fleming, you've got  
6 your exhibits in. Next question?

7 REDIRECT EXAMINATION

8 BY MR. FLEMING:

9 Q. Mr. Abada --

10 THE COURT: You've also gotten your three minutes  
11 but --

12 MR. FLEMING: I wasn't counting that as my three  
13 minutes, Your Honor.

14 Q. Mr. Abada, you recall earlier this afternoon you were  
15 asked some questions about the cash management system that  
16 Jennifer and Hartsdale employs?

17 A. Yes.

18 Q. The cash management system that you described, was that  
19 the same as the one that was in place in 2007?

20 A. 2007, yes, correct.

21 Q. Right. Was it also in place in 2008?

22 A. Yes.

23 Q. And was that the one that was in place on each occasion  
24 when a TUA was signed with Ashley?

25 A. Yes.

1 Q. Is there anything in the TUA that addresses Hartsdale's  
2 cash management that you're aware of?

3 A. No.

4 Q. Did anyone from Ashley ever make any inquiries about  
5 Hartsdale's cash management or Jennifer's cash management?

6 A. No.

7 Q. The TUA, do you have the one in front of you that you were  
8 shown?

9 A. Yes.

10 Q. Paragraph 24, can you take a look at that? It's the  
11 financial reporting paragraph.

12 A. Okay.

13 Q. And the first sentence addresses providing quarterly  
14 financial reports and it says, "In the form and content  
15 required by licensor." Did anyone from Ashley ever provide  
16 Hartsdale with forms to use for issuing quarterly reports?

17 A. No.

18 Q. Did anyone from Ashley ever ask for quarterly reports?

19 A. Not -- quarterly reports? No.

20 Q. No. And when was the first time you got a request for any  
21 financial information from Hartsdale?

22 A. It was at the time we prepared the 2009 -- fiscal 2009  
23 numbers for Ashley.

24 Q. Now did Jennifer in its public filings report information  
25 about its Ashley segment?

1 A. Yes, we --

2 Q. And what information was reported there?

3 A. For our filings a public company, we provide segment  
4 reporting on the Jennifer segment, the Ashley segment and then  
5 corporate overhead.

6 MR. FLEMING: Those were all the questions I have,  
7 Your Honor.

8 THE COURT: Any other party?

9 MR. CARR: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. CARR:

12 Q. Good afternoon, Mr. Abada. My name is Jim Carr from the  
13 law firm of Kelley Drye & Warren and I represent the creditors  
14 committee in this case.

15 A. Good afternoon.

16 Q. Mr. Abada, I have a few questions in connection with the  
17 TUA. If you can please, turn to page 2, paragraph 4.

18 A. yes.

19 Q. Specifically, I want to refer to the fourth paragraph in  
20 paragraph 4. Have you read that paragraph?

21 A. I read it before. I'll take a quick read again.

22 Q. Okay.

23 A. Okay.

24 Q. Does anywhere in that paragraph say that licensee is  
25 obligated to pay in full all parties' obligations for which the

1       licensee does business with?

2               MR. GOLDSTEIN:  Objection.  He's asking for a legal  
3       conclusion and he's asking his understanding of what it says.

4               MR. CARR:  I'm just asking if it has the word in  
5       full.

6               THE COURT:  I can read the document.

7               MR. CARR:  Okay.

8               THE COURT:  I don't see the words in full in that  
9       paragraph.

10              MR. CARR:  Okay.

11              THE COURT:  The record will so show.

12       Q.     The next question --

13              THE COURT:  For whatever that's worth.

14       Q.     Next question; in connection with this document, to the  
15       best of your knowledge is the words or the terms "all sum due"  
16       defined anywhere?

17       A.     No.

18       Q.     As a corporate officer of the debtors, is one of your  
19       obligations to interpret what this document means to you?

20       A.     To some extent; yes.

21       Q.     Okay.  If a party for which the debtors conduct business  
22       is owed ten dollars, let's say, and for whatever reason that  
23       party wants to get paid eight dollars and you agree to pay that  
24       party eight dollars, are you now violating this agreement?

25       A.     No.



1 THE COURT: Sustained.

2 MR. GOLDSTEIN: Thank you, Your Honor.

3 Q. I want to turn your attention to paragraph 27 on page 8,  
4 the default provisions.

5 A. Paragraph 27; okay.

6 Q. Specifically I want to turn your attention to 27(a) for  
7 the first part of 27(a) --

8 A. Just give me a moment.

9 Q. -- where it says, "Licensee. It's an event of default if  
10 licensee becomes insolvent or generally does not pay its debts  
11 as they mature."

12 The term "generally does not pay its debts as they mature"  
13 in connection with your interpretation, is that inconsistent  
14 with paragraph 4?

15 A. I would say yes.

16 Q. Okay. I want to turn your attention to paragraph 27(h).

17 A. Okay.

18 Q. Another event of default. It says, "Licensee fails to pay  
19 when due any amounts due to any third party, with which  
20 licensee does business." Is (h) inconsistent with paragraph  
21 27(a)?

22 MR. GOLDSTEIN: Is it inconsistent with his  
23 understanding?

24 MR. CARR: Inconsistent with his understanding.

25 THE COURT: Do you have an objection?

1 MR. GOLDSTEIN: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. CARR: I have no further questions.

4 THE COURT: Anyone else?

5 MR. NEIGER: Yes, Your Honor. Edward Neiger on  
6 behalf of Mengnu. May I introduced the secured credit exit  
7 facility into evidence?

8 THE COURT: Surely. Why don't we mark it. Is it in  
9 any of the books because we should use that -- we can use that  
10 document perhaps more readily.

11 MR. GOLDSTEIN: I just need to know which one we --

12 THE COURT: Yes.

13 MR. GOLDSTEIN: There's so many floating around. It  
14 would be nice to have a couple of extra copies, so we're all  
15 looking at the same document.

16 THE COURT: All right. That's a good idea.

17 MR. GOLDSTEIN: Thank you, Your Honor.

18 THE COURT: Let's see. Where is it in the books?

19 MS. NADRITCH: Your Honor, I believe it's in the  
20 first binder in tab 5, letter W.

21 THE COURT: W.

22 MR. GOLDSTEIN: Does counsel have a book for me?

23 MS. NADRITCH: I don't know --

24 THE COURT: You don't have one of these books?

25 MR. GOLDSTEIN: I do not, Your Honor.

1 THE COURT: Well I think you may be very fortunate.

2 MR. GOLDSTEIN: I think you -- I actually do have --

3 THE COURT: But you have a right to it.

4 MR. GOLDSTEIN: I just, for these purposes, would  
5 like a copy of the document we're referring to.

6 THE COURT: W.

7 MS. NADRITCH: Actually, it might be --

8 THE COURT: Amended Exhibit B is amended terms of  
9 tranche A, B, C, D and E notes.

10 MS. NADRITCH: One second. I apologize, Your Honor.  
11 It's Exhibit V then, one prior to that.

12 THE COURT: V?

13 MS. NADRITCH: V.

14 THE COURT: Amended exit loan agreement?

15 MS. NADRITCH: Correct, Your Honor.

16 THE COURT: All right. Exhibit V. Okay. Why don't  
17 you make sure counsel has a copy.

18 MR. GOLDSTEIN: Yes, Your Honor. I'm sorry. I'm  
19 confused because I have a document that has the date on the  
20 bottom, 118503-1, which I understood to be the most up-to-date  
21 current final version. Counsel for Mengnu handed me a document  
22 that on the bottom says 1138372-2. So I am --

23 THE COURT: That's what I have in the book.

24 MR. GOLDSTEIN: 1138372-2?

25 THE COURT: Yup.

1 MR. GOLDSTEIN: Okay.

2 MS. NADRITCH: Your Honor?

3 MR. GOLDSTEIN: That's not the one they've given me  
4 that says it's the final version. So I am confused.

5 THE COURT: This may be before, I don't know. What  
6 is it, Mr. Neiger?

7 MR. NEIGER: I just gave him the final version.

8 MR. GOLDSTEIN: Well let's have the Judge --

9 MS. NADRITCH: Do you know what, Your Honor, I can  
10 correct the record if they don't mind. It's in the second  
11 binder, it's tab AA is the one that counsel for Ashley is  
12 looking at, I believe. It has the bottom page as 1185008 as  
13 the first page. That's the cover page.

14 THE COURT: And is that the most recent?

15 MS. NADRITCH: That is the most recent. That's the  
16 one I believe --

17 THE COURT: So Mr. Neiger doesn't have the most  
18 recent because he has 1138372-2.

19 MS. NADRITCH: Well this is what Mr. Neiger provided  
20 to us. So I don't --

21 MR. NEIGER: It's probably the same one. Our  
22 computer just put on different number.

23 THE COURT: Well, somebody ought to take a look.

24 MS. NADRITCH: I can hand Mr. Neiger the correct  
25 version.

1 THE COURT: Now what binder? You were talking about  
2 document AA?

3 MS. NADRITCH: Yes, Your Honor.

4 THE COURT: In binder what?

5 MS. NADRITCH: Binder number 2.

6 THE COURT: Binder 2. I don't have anything marked  
7 AA.

8 MS. NADRITCH: Then binder -- mine are incorrect  
9 then, Your Honor. Maybe I -- I apologize. Binder 3?

10 THE COURT: Well, that's the other possibility.  
11 Binder 3, AA. Okay. I'm in binder 3, second amended secured  
12 exit credit agreement. The other one was -- V was secured exit  
13 credit agreement marked draft. This is second amended secured  
14 exit credit agreement, also marked draft, 1185035-1. That's  
15 the most recent, Mr. Neiger?

16 MR. NEIGER: I believe so.

17 THE COURT: Well it is or it isn't.

18 MS. NADRITCH: It's the most recent, Your Honor. The  
19 one we most recently filed on the docket, that all the parties  
20 have.

21 THE COURT: All right.

22 MR. NEIGER: The provision that I am going to be  
23 addressing, I believe are in all the versions that everyone  
24 has.

25 THE COURT: All right. Well, we'll see. We'll find

1 out.

2 MR. NEIGER: And I'm also going to be brief, not more  
3 than three minutes, Your Honor.

4 THE COURT: Well we've held you up now for more than  
5 three minutes. Please go ahead. What's your first question?

6 MR. NEIGER: Thank you, Your Honor. May I give a  
7 copy to the witness?

8 THE COURT: Yes.

9 MR. NEIGER: Thank you.

10 THE COURT: This is document 1185035-1.

11 REDIRECT EXAMINATION

12 BY MR. NEIGER:

13 Q. Mr. Abada, in the last "Whereas" before Article 1 --

14 A. Uh-huh.

15 Q. -- may I point your attention to 2(i) that describes the  
16 cash facility? And would you mind taking a minute to review  
17 that?

18 A. Okay.

19 Q. And specifically 2(b) of that.

20 A. Additional -- okay.

21 Q. Is it your understanding after reading that now that  
22 Mengnu will not only be providing the CIA or the relending of  
23 the DIP money or monies owed under the DIP but also new cash?

24 A. The new cash, I was referring to was the receipt of goods  
25 dating for new merchandise coming in. That's what I referred

1 to before.

2 Q. May I ask that you take a look at Article 5 of the credit  
3 facility, lease of proceed.

4 A. Yup. Okay.

5 Q. Is it your understanding now that the proceeds of the exit  
6 facility will be to provide working capital to Jennifer?

7 A. Yes, as well as repay obligations.

8 MR. NEIGER: No more questions. Thank you, Your  
9 Honor.

10 THE COURT: Anyone else?

11 (No response)

12 THE COURT: All right. Any recross?

13 RECROSS-EXAMINATION

14 BY MR. GOLDSTEIN:

15 Q. Mr. Abada, if you could turn to document number 9, tab 9  
16 in the Ashley binders? That's the --

17 A. Yup, I have it.

18 Q. -- August 17 letter we talked about previously. Do you  
19 have that in front of you?

20 THE COURT: In binder 2 -- binder 1 of Your Honor.

21 MR. GOLDSTEIN: Binder 1.

22 A. I have it.

23 MR. GOLDSTEIN: Tab 9.

24 THE COURT: Tab 9 is the letter of August 17, 2010.

25 MR. GOLDSTEIN: Right.

1 Q. Mr. Abada, when you just testified that Ashley had not  
2 requested any information regarding their cash management  
3 system, and you said no, you were not including the August 17  
4 letter in your mind when you said that; is that correct?

5 A. The question I was answering a few moments ago?

6 Q. Yes.

7 A. I answered the question that the first recollection we  
8 have -- when I say we, myself and my accountants, for Ashley  
9 client making a request for any financial documentation related  
10 to HCI was towards the end of calendar year 2009. And at that  
11 time, we provided them with fiscal year-end 2009 and 2008.

12 Q. And that request at that time included cash management  
13 information?

14 A. I don't believe so. I think they just needed P&Ls, balance  
15 sheets.

16 Q. So was there ever a time that Ashley requested the  
17 information regarding the cash management system?

18 A. Well, apparently on August 17.

19 Q. Okay, thank you. They made that request?

20 A. Yes.

21 Q. I didn't mean to interrupt you.

22 A. Yes.

23 Q. If the debtors confirm their plan, they won't be a public  
24 company, will they?

25 A. If the plan gets confirmed, we most certainly will be a



1 public company.

2 Q. You'll be a public company?

3 A. Yeah. Yes.

4 Q. And you'll be reporting as a public company?

5 A. Yes.

6 Q. And you'll be making SEC filings?

7 A. Yes.

8 Q. Quarterly and annually.

9 A. Yes.

10 Q. For Jennifer Convertibles, Inc.?

11 A. That's correct.

12 Q. That's your understanding.

13 A. Jennifer Convertibles, Inc. and within those filings we do  
14 segment reporting.

15 Q. No, no, no. But post-confirmation?

16 A. We would continue to do segment reporting.

17 Q. Are you going to be filing documents with the Securities  
18 and Exchange Commission?

19 A. For JCI.

20 Q. For JCI?

21 A. Yes, absolutely.

22 Q. 10-Qs and 10-Ks?

23 A. 10-Qs, 10-Ks and sometimes 8-Ks and things like that.

24 Q. The counsel for Mengnu handed you the document, the exit  
25 facility document, that you looked at earlier, do you have that

1 in front of you.

2 A. Yes.

3 Q. And you were looking at the fifth "Whereas" clause  
4 previously. Do you have that in front of you?

5 A. I'm looking at the document.

6 Q. Yes.

7 A. The exit financing.

8 Q. Okay. You're looking at the document. If you would turn  
9 to the recitals.

10 A. What page?

11 Q. Page 1.

12 A. Page 1. Okay.

13 Q. The recitals. Page 1's not marked.

14 A. Okay.

15 Q. Page 2 is.

16 A. Yup.

17 Q. The fifth "Whereas" clause. Do you see -- that's the one  
18 you were looking at earlier, do you see that?

19 A. Yes.

20 Q. Focusing your attention on subpart 2(a) where a reference  
21 is made to the cash facility, isn't it correct that Mengnu's  
22 obligation to provide funds under the cash facility is at its  
23 discretion?

24 A. Certain components of it.

25 MR. GOLDSTEIN: I don't have any further questions,

1 Your Honor.

2 THE COURT: Anything further from anyone else?

3 MR. FLEMING: No questions, Your Honor.

4 THE COURT: All right. Thank you, Mr. Abada. You  
5 may step down.

6 (Witness excused)

7 THE COURT: We have a proffered declaration of Mr.  
8 Grien and if there's no objection, we'll admit that as his  
9 direct testimony subject to questioning by counsel as to his  
10 qualifications if counsel wishes to do so or any disqualifying  
11 history and then cross-examination.

12 Mr. Grien, would you come forward and take the stand  
13 please? Please state your name for the record.

14 MR. GRIEN: Robert Grien.

15 THE COURT: And spell your name.

16 MR. GRIEN: G-r-i-e-n.

17 (Witness sworn)

18 THE COURT: If you wish to put these documents  
19 together and aside, you may. We're going to use some of them.  
20 You can put them there, so they're not in the way.

21 CROSS-EXAMINATION

22 BY MR. GOLDSTEIN:

23 Q. Mr. Grien, good afternoon. My name is Michael Goldstein.

24 I'm with Greenberg Traurig. We represent Ashley HomeStores and  
25 Ashley Furniture.

1 Did I get the pronunciation of your name correct?

2 A. It's Grien like the color.

3 Q. Grien. Okay. Thank you.

4 Mr. Grien, you don't have twenty years experience in  
5 restructuring advisory industry; do you?

6 A. Not per se.

7 Q. Thank you.

8 Mr. Grien, your testimony set forth in the declaration is  
9 dependent upon information provided to you by the debtors;  
10 correct?

11 A. Yes.

12 Q. And your testimony set forth here in the declaration is  
13 also based in part upon your review of business records of the  
14 debtors; correct?

15 A. Well, yeah, business information.

16 Q. You didn't independently verify any of that information;  
17 did you?

18 A. No.

19 Q. You didn't independently audit any of that information;  
20 did you?

21 A. Well that's what I meant when I said I didn't  
22 independently verify. I mean I due diligenced it, but I didn't  
23 audit it.

24 Q. By due diligence, you meant you -- you mean you reviewed  
25 the information; correct?

1 A. Yes.

2 Q. You didn't test the information through any processes or  
3 procedures to determine if the information was accurate; did  
4 you?

5 A. Well, I mean the information that we received from the  
6 company, we reviewed it with them. We queried them about it.  
7 We tried to develop an understanding of it. We may have  
8 challenged certain information. We did typical diligence of  
9 that sort.

10 Q. So you didn't go back and look at original invoices; did  
11 you?

12 A. No.

13 Q. You didn't go back and test the company's accounting  
14 systems to see if they're reliable; did you?

15 A. No.

16 Q. You didn't test the company's software system to see if it  
17 was accurate; did you?

18 A. No.

19 Q. You didn't review any of the company's underlying  
20 contracts to see if transactions in the company's financial  
21 systems were recorded in accordance with those contracts; did  
22 you?

23 A. No.

24 Q. In fact, Mr. Grien, what you did and I quote is you quote,  
25 "Assumed and relied on the accuracy and completeness of all

1 financial and other information furnished by the debtors."

2 Isn't that correct?

3 A. Yes, but I think that was in the context of the  
4 projections.

5 Q. So in the context of the projections, you assumed and  
6 relied on the accuracy and completeness of all financial and  
7 other information furnished to you by the debtors; correct?

8 A. Well, as I said, we did due diligence on the information.

9 Q. And by due diligence, you mean reviewing information  
10 provided to you by the debtors; correct?

11 A. Correct.

12 Q. And by due diligence, you mean asking the debtors  
13 questions; correct?

14 A. Sanity-checking, what investment bankers typically do.

15 Q. Just so I am clear, the investment bankers you're  
16 referring to, they're the same ones that issued subprime debt  
17 and caused the 2007 financial crisis?

18 MR. FLEMING: Objection, Your Honor.

19 MR. GOLDSTEIN: I strike that, Your Honor.

20 THE COURT: Sustained.

21 Q. Mr. Grien, you were involved in the Spectrum Jungle Labs  
22 Corporation bankruptcy case; correct?

23 A. Correct.

24 Q. And before your -- and that case took place in 2009;  
25 correct?

1 A. Correct.

2 Q. And before that case you never read a plan of  
3 reorganization; isn't that correct?

4 A. No, that's not correct.

5 Q. You didn't testify to that in a deposition in that case,  
6 that you --

7 A. I'm sure that I testified --

8 Q. -- that was the first plan of reorganization --

9 A. I'm sure that I testified for, you know, six or seven  
10 hours in a deposition. I'm sure that I testified for many  
11 hours on the stand. And I'm sure that I established that I had  
12 spent twenty years as a lender and had been involved with a lot  
13 of companies in a lot of various stages of workout.

14 Q. And that --

15 A. So I am not sure what the context of that was.

16 Q. And you did not, in your deposition testimony in that case  
17 say that the first reorganization plan you had ever read was in  
18 connection with that case?

19 A. I don't recall that.

20 Q. So you don't know if that's true or not?

21 A. I don't recall that and I don't know the context of it,  
22 even if I said it.

23 Q. in that Spectrum bankruptcy case, you were qualified as an  
24 expert on the subject of industry practice in connection with  
25 credit agreements; correct?

1 A. Correct.

2 Q. And before your employment with TM Capital, you had spent  
3 your professional career in connection with lending  
4 transactions; is that correct?

5 A. Say that again.

6 Q. Okay. Prior to 2009 when you joined TM Capital, you had  
7 spent your career primarily involved in connection with lending  
8 transactions; correct?

9 A. Yes, as a lender in leveraged transactions.

10 Q. TM Capital's financial advisor to the debtor; is that  
11 correct?

12 A. Correct.

13 Q. And you have been very involved in TM Capital's providing  
14 financial advisory services to the debtor in connection with  
15 these cases; correct?

16 A. Yes, from about March of April of last year.

17 Q. It's been pretty time-intensive during parts of that time  
18 period?

19 A. Yes.

20 Q. You spent a lot of time with management; haven't you?

21 A. Yes.

22 Q. You've advised and assisted the debtors in putting  
23 together the plan of reorganization; haven't you?

24 A. Yes.

25 Q. You've advised and assisted the debtors in negotiating



1 parts of the plan of reorganization with creditors; haven't  
2 you?

3 A. Yes.

4 Q. Is it fair to say you advised and assisted the debtors in  
5 connection with its operations in planning for its ongoing  
6 operations?

7 A. I'm not sure what you mean.

8 Q. Okay. That's fine. I withdraw that.

9 Is it fair to say you've developed a very good working  
10 relationship with the debtors' management?

11 A. Yes, some members.

12 Q. Some members?

13 A. Of the management --

14 Q. Some members of the managements.

15 A. I think Rami mentioned there's eight managers. I would say  
16 there's a few that I have developed closed relationships with.

17 Q. Is it fair to say that you'd be disappointed if the plan  
18 of reorganization wasn't confirmed?

19 A. That -- I'm just trying to do the best job I can as a  
20 fiduciary for the various parties involved here.

21 Q. You're also trying to get paid, too; right?

22 A. Obviously, I'd like to get paid but I have an engagement  
23 letter that's specific as to what happens in certain  
24 circumstances.

25 Q. And that engagement letter provides for a transaction fee

1 upon the successful confirmation of reorganization plan; does  
2 it not?

3 A. Well not specifically. It does have a success fee but  
4 it's not tied to a successful confirmation of the plan. I  
5 think what it really is is a success fee that says that I don't  
6 receive anything if the company ends up doing a Chapter 7  
7 liquidation.

8 Q. Mr. Grien, the engagement letter filed with this court  
9 attached the application of the debtors pursuant to Sections  
10 105, 327(a) and 328(a) of the Bankruptcy Code and the  
11 authorization to employ and retain TM Capital Corp. as  
12 financial advisors to the debtors states, "In the event that  
13 the company completes financing or strategic transaction  
14 including romanette iv the sale of the business assets or  
15 equity securities the company or a substantial portion thereof  
16 or other similar transaction or a combination thereof, the  
17 company agrees to pay in cash at closing a fee, the transaction  
18 fee of 500 thousand dollars."

19 MR. FLEMING: Your Honor, I would ask that the  
20 witness be allowed to look at the documents instead of having  
21 portions read. When I hear romanette iv, it tells me that  
22 there's romanette i, ii and iii.

23 THE COURT: If we ever get a question, the witness  
24 will have a chance to look at the document.

25 MR. FLEMING: Okay, thank you.

1 Q. Mr. Grien, isn't it true that your engagement letter  
2 states that the company TM Capital will get a transaction fee  
3 of 500 thousand dollars upon the confirmation of a plan of  
4 reorganization?

5 A. As I said --

6 Q. Does it --

7 A. As I said, our engagement letter specifically carves out a  
8 Chapter 7. That's my recollection. I don't have the  
9 engagement letter with me but there was conversation with the  
10 Board about that and that's my recollection of what was carved  
11 out of our success fee.

12 Q. So your view is that your engagement letter carves out the  
13 transaction fee, the Chapter 7 liquidation?

14 A. Yes.

15 Q. So if there's a Chapter 7 liquidation, you don't get a  
16 success fee; is that correct?

17 A. Correct. But if there was a Chapter 11 liquidation or any  
18 other variety of transactions that could occur within the  
19 context, of the bankruptcy we would get paid, not specifically  
20 of this plan.

21 Q. So the confirmation of a plan of reorganization would  
22 include -- would result in the payment of a success fee;  
23 correct?

24 A. That's correct.

25 Q. So then confirmation of the plan is before the Court would

1 result in TM Capital being entitled to a 500 thousand dollar  
2 success fee under its engagement letter; correct?

3 A. That's correct.

4 Q. Mr. Grien, in connection with the debtors' disclosure  
5 statement, you assisted the debtors in preparing a liquidation  
6 analysis; correct?

7 A. That's correct.

8 Q. And that liquidation analysis was prepared on a  
9 consolidated basis for all the debtors; correct?

10 A. That's correct.

11 Q. That liquidation analysis doesn't set forth the  
12 liquidation analysis of any of the individual debtors; is that  
13 correct?

14 A. That's correct.

15 (Pause)

16 Q. Mr. Grien, you should have a witness stand -- actually  
17 trial binders. If you go to binder 1, tab 17, it's the amended  
18 disclosure statement. When you get to that tab, just let me  
19 know.

20 A. I'm there.

21 Q. You're there? Tab 17. If you go to the back of the  
22 document and work your way forward, Exhibit B is the debtors'  
23 projections.

24 A. Yup.

25 Q. Are you there?

1 A. Yup.

2 Q. These projections for the years stated are prepared on a  
3 calendar year basis; correct?

4 A. That's correct.

5 Q. So calendar year 2011 starts January 1, 2011; correct?

6 A. That's correct.

7 Q. So these projections for calendar year 2011 assume that  
8 the effective date occurs before or after calendar year 2011.

9 A. These projections assume that the effective date is  
10 effectively January 1, I guess. I mean it assumes that the  
11 projection period starts immediately upon the effectiveness of  
12 the plan, and therefore all of the transactions that would  
13 occur upon effectiveness of the plan are not specifically  
14 expressed in the cash flow statements but the opening balance  
15 sheet would reflect them in terms of cash, et cetera.

16 Q. So the opening balance sheet -- well -- for calendar year  
17 2011 assumes that the effective date already occurred?

18 A. That's correct. So the payment, for example, to -- on the  
19 503(b)(9) claims that would occur upon the effective date is  
20 already taken out of the cash that we were projecting out of  
21 thirteen week cash flow statements.

22 Q. Is there a sources and uses of cash and the effective date  
23 in Exhibit B?

24 A. No, not that I am aware of.

25 Q. Mr. Grien, do you know what the projected opening amount

1 of the tranche E note will be under the plan?

2 A. I believe it's roughly 2.6 million.

3 Q. So does that mean that as of the effective --

4 A. I should strike -- I should clarify. That's the maximum  
5 availability. we'll just have to see what the closing numbers  
6 are that it would fully be drawn but that's the maximum  
7 availability.

8 Q. So you don't know what the actual amount will be on the  
9 effective date.

10 A. No, I don't know the exact number because it's a working  
11 capital line that will be determined by the needs at that  
12 moment.

13 Q. How do you know that you're going to have enough  
14 availability if you don't know what the number is?

15 A. Well, we have been since the beginning of this case doing  
16 rolling thirteen week cash forecasts which is typical in these  
17 types of situations. We update those projections from time-to-  
18 time on a go forward basis. We update the historical weeks for  
19 the actuals and we have a rolling projection on what our cash  
20 balance will be in any given time. I think a form of that was  
21 filed as the DIP budget in this case. And so we use that to  
22 calculate what the cash balance will be on the effective date.

23 Q. So according to that rolling thirteen week cash flow  
24 forecast that you're familiar with, what does it suggest will  
25 be the amount of the tranche E note on the effective date?

1 A. I don't recall the exact tranche E number but I believe  
2 our current estimate of cash on the balance sheet pro forma for  
3 all the exit transactions is roughly a million-four.

4 Q. So the principal amount of the tranche E note, the  
5 effective date will a million-four; is that --

6 A. No, it will be higher. It will be, you know, whatever the  
7 number is. There's -- it's a pretty complicated formula on how  
8 that works but there's availability right now, I believe of 2.6  
9 million under the note. I don't recall if it's all drawn but  
10 there's 2.6 of availability.

11 Q. So you just don't know how much of it will be drawn.

12 A. I mean I could go back and check my notes but I don't have  
13 it in the top of my head.

14 Q. So as you -- Mr. Grien, you're familiar with the secured  
15 exit financing that's being provided by the plan sponsor, I  
16 assume.

17 A. Yes.

18 Q. So however much of the 2.6 million dollars is not drawn on  
19 the effective date, that balance will be available to the  
20 debtors post-confirmation; correct?

21 A. I believe so. It could be.

22 Q. When you say could be, why are you hesitating?

23 A. I believe it could be available.

24 Q. Okay.

25 A. Yes.

1 Q. And that the secured exit financing also provides for a  
2 letter of credit facility; correct?

3 A. Yes.

4 Q. And it also provides for additional funding if Mengnu  
5 decides to make that funding available; correct?

6 A. You're talking about the LOC?

7 Q. No, the secured exit credit agreement, the additional cash  
8 portion.

9 A. Yes.

10 Q. Yes, that additional cash will be made available to the  
11 plan sponsor if they so choose; correct?

12 A. I'm not sure I understand the question. That's pretty  
13 convoluted.

14 Q. So let me go back. The secured exit financing credit  
15 agreement that the plan sponsor's providing has three  
16 components; correct? Has an LOC component; yes?

17 A. Correct.

18 Q. It has a tranche E note component; correct?

19 A. Correct.

20 Q. And it has an additional cash component; correct?

21 A. I'm not sure what you mean by the cash component.

22 Q. I'm trying to say that it has a cash facility component;  
23 correct?

24 A. I'm not sure what you're talking about.

25 Q. Okay. Let me strike --



1 A. There's a letter of credit and there's a tranche E  
2 facility.

3 Q. So there's only two facilities.

4 A. And yes, then there's cash coming back to the company with  
5 respect to money that's in the escrow. That might be --

6 Q. Okay.

7 A. That's what I think. When I think of the cash, there's  
8 money in escrow that's been effectively paid for goods that  
9 have been delivered that's sitting in escrow. That money will  
10 be remitted back to the company.

11 The remaining or -- I'm sorry, on goods that haven't been  
12 delivered yet. That money will be remitted back to the company  
13 and then when those goods come in, the company has ninety days  
14 to pay for them.

15 Q. And that money that's in escrow can be used by the company  
16 to pay for expenses on the effective date.

17 A. Correct.

18 Q. And that's money in that escrow Mr. Abada testified was  
19 about 2.6, 2.7 million; correct?

20 A. I believe that is the escrow number today. That's not  
21 necessarily the availability number. It's a complicated  
22 formula.

23 Q. Well, Mr. Grien, you're the financial advisor and I'm just  
24 the lawyer and I would like to understand what the formula is  
25 that tells us how much availability there is to the debtor --

1 A. It's a --

2 Q. -- on confirmation --

3 A. It is a number that is --

4 Q. -- and post-confirmation.

5 A. It's a number that's calculated at a date and time. As I  
6 said, our -- I don't have those specific numbers committed to  
7 memory, but what I can tell you is that based on our  
8 projections of deliveries, et cetera, the excess cash on the  
9 balance sheet at the time of exit pro forma for all the  
10 payments due at exit will be approximately 1.3 million dollars.

11 Q. Let's take a look at tab 7 in the binder. Are you  
12 familiar with the document that's behind tab 7? It's the DIP  
13 budget dated --

14 A. Yes.

15 Q. -- 11/24/10. Is this an example of one of those rolling  
16 cash flow statements you referred to earlier?

17 A. Yes.

18 Q. Perhaps you can help me understand your testimony by  
19 looking at this document. I realize the numbers are small but,  
20 it's not my --

21 A. Yeah, I was going to say the numbers are a little small  
22 for me to read.

23 Q. It's not my document but if you look at the very last  
24 column, is that column reflecting estimated payments as of the  
25 effective date?

1 A. Yeah, that's the settlement column. That's the column I  
2 said we used in creating an initial balance sheet for our  
3 projections.

4 Q. All right. So we look at this spreadsheet and hopefully  
5 it refreshes your recollection. Can you tell me as of the  
6 effective date after making all the projected payments, what  
7 will be the availability under the -- not the letter of credit  
8 portion of the secured exit facility but the working capital  
9 portion of that facility?

10 A. I can't read it. If you want to point to a line, I'll --  
11 I can't read it.

12 Q. Do you see the ending operating cash number in the  
13 settlement column is 1.7 --

14 A. That's a million -- it looks like a 1.71 million.

15 Q. A million-seven?

16 A. Yes.

17 Q. So is that cash from the balance sheet?

18 A. That would be --

19 Q. Is that --

20 A. That would be ending cash on the balance sheet. And that  
21 was our projection as of the date we filed the DIP budget which  
22 I believe was in November.

23 Q. Right. And so the -- if you go to the top of that  
24 settlement column where it has cash inflows, it looks like you  
25 had a million-seven that you were projecting that was in the

1 escrow account?

2 A. Yeah, that's coming from the CIA escrow account.

3 Q. Right, which now is closer to 2.6 million?

4 A. Yes.

5 Q. Okay.

6 A. What's in the account.

7 Q. So I am just trying to understand. So are you going to --  
8 does this mean you end up with under this projection 1.7  
9 million dollars of cash on the effective date --

10 A. Yes.

11 Q. -- after making all the effective date payments?

12 A. Yes.

13 Q. Okay. And that would be then the amount that's due under  
14 the security tranche note; is that correct?

15 A. The ending cash balance is not the number that is due  
16 under the note.

17 Q. Okay.

18 A. What is due under the note is the amount of money that's  
19 borrowed under the note which is the amount of the current DIP  
20 facility plus any monies taken out of the escrow account which  
21 is based on a formula at the date and time which we believe  
22 right now is 2.6 million of availability.

23 Q. The DIP --

24 A. But it --

25 Q. The DIP balance right now is how much?

1 A. Half a million.

2 Q. Half a million dollars; okay. And so that's going to be  
3 rolled into the tranche E note, a half a million dollars.

4 A. Yes.

5 Q. Okay. And you have -- and the monies that you use out of  
6 the escrow account for effective date payments --

7 A. Correct.

8 Q. -- that will be rolled into the tranche E note, as well;  
9 correct?

10 A. Correct.

11 Q. Under this document that we're looking at, tab 17 as of  
12 the settlement date, you would effectively about 1.7 million  
13 dollars was being taken out of the escrow account, being used  
14 to make expenses and you end up with an opening cash balance.  
15 So that would then suggest, am I correct, that a million-seven  
16 would have been taken out of the account and rolled into the  
17 tranche E note?

18 A. Yes. Yes, that's what it looks like on this page.

19 Q. All right. So, looking at these numbers then, you would  
20 have a tranche E note of a half a million dollars, a tranche E  
21 note of a million-seven that came out of the escrow account,  
22 rolled into the tranche E note and you have nothing left in the  
23 escrow account; correct? That would be the mechanics?

24 A. Right. The escrow goes away on effectiveness.

25 Q. Right. Okay. Now if there was 2.6 million dollars in the

1 escrow account and on these numbers you only needed to use a  
2 million-seven, you would have round numbers -- a million  
3 dollars left in the escrow account for the company to use post-  
4 confirmation; correct?

5 A. No, I don't believe it works that way.

6 Q. No?

7 A. I don't think you fully understand the escrow way it  
8 works. The escrow is for money that the company has paid on a  
9 CIA account for goods from Mengnu. And some of that money is  
10 for goods that haven't been shipped and some of -- and when the  
11 goods have been shipped, the money was left in that account.

12 The money at -- it's not like one number. There's a  
13 certain amount of money that is representing goods that have  
14 already been shipped that can be lent back under the DIP  
15 facility. There's money for goods that haven't been shipped  
16 that is going to be released back to the company as cash on the  
17 effective date.

18 Q. Right.

19 A. So if there's 2.6 million dollars in the escrow account  
20 today, it's not to say that 2.6 million dollars will be the  
21 balance of the E note. Some of that money will be released  
22 back to the company as cash.

23 Q. Right.

24 A. Some of it may be -- is eligible to be borrowed and I  
25 think -- I said, I think the availability is 2.6. So I think

1       it's the 2.1 of cash plus the half a million that's already  
2       borrowed under the DIP facility.

3       Q.    Okay.  So we have -- then is it fair to say under the exit  
4       facility provided by the plan sponsor, there's a letter of  
5       credit facility and a working capital facility that has  
6       availability of 2.6 million dollars?

7       A.    Well the letter of credit is a separate issue.  The E note  
8       is 2.6.

9       Q.    Right.

10      A.    And the letter of credit is I think up to five.

11      Q.    Okay.

12               MR. GOLDSTEIN:  I just have a few more questions,  
13      Your Honor.

14      Q.    The -- under the E note terms, if the 2.6 million dollars  
15      of availability is exhausted, then unless we knew -- agrees  
16      otherwise, there will be no more working capital availability  
17      under the E note; correct?  Is that your understanding?

18      A.    Well, the 2.6 is the maximum availability.

19      Q.    Okay.

20      A.    So, yes, like any lender if you require more cash than you  
21      have on your facility, you have to either get an increase or  
22      whatever.

23      Q.    The E note -- the tranche E note has an excess cash flow  
24      provision; correct?

25      A.    A cash sweep; yes.

1 Q. Yeah. And that's based upon consolidated cash flow;  
2 correct?

3 A. Yes.

4 MR. GOLDSTEIN: Your Honor, I don't have any further  
5 questions at this time.

6 THE COURT: Thank you. Any redirect?

7 MR. FLEMING: No, Your Honor, no redirect.

8 THE COURT: Anyone else? Mr. Neiger?

9 MR. NEIGER: No, Your Honor. Thank you.

10 THE COURT: Nothing from the creditors committee.  
11 Anyone else?

12 (No response)

13 THE COURT: All right. I think that allows you to  
14 stand down, Mr. Grien. Thank you.

15 (Witness excused)

16 THE COURT: Do we have any other testimony on behalf  
17 of the debtors or plan proponent?

18 MR. FLEMING: Your Honor, could we just break? We  
19 want to discuss whether or not we want to call Mr. Sperry.

20 THE COURT: All right. That's fine.

21 MR. FLEMING: That's was the issue you left on the  
22 table for us.

23 THE COURT: We'll take a five or ten minute break. I  
24 think we can go today until 6:30. Is that all right? All  
25 right. But however, no one will be penalized for not going



1       that long. We'll take a five minute break.

2               MR. FLEMING: Thank you.

3               (Recess from 5:01 p.m. until 5:23 p.m.)

4               THE COURT: Please be seated. All right, Mr.  
5       Fleming, where are we?

6               MR. FLEMING: Your Honor, we are not offering Mr.  
7       Sperry's declaration. We would like to call Mr. Sperry to the  
8       stand for a brief examination on the tranche E note and I think  
9       Mr. Neiger's going to ask him the question since he proffered  
10      the affidavit, if that's acceptable.

11              THE COURT: All right.

12              MR. NEIGER: Thank you, Your Honor.

13              MR. FLEMING: Mr. Sperry?

14              THE COURT: Please state your name for the record.

15              MR. SPERRY: L. Thomas Sperry or Tom Sperry.

16              (Witness sworn)

17              THE COURT: Please be seated.

18       DIRECT EXAMINATION

19       BY MR. NEIGER:

20       Q. Good afternoon, Mr. Sperry. Who do you work for?

21       A. I work for my own firm, Sperry Restructuring Advisors.

22       Q. What is Sperry Restructuring Advisors role in this  
23       bankruptcy?

24       A. We are the financial advisor to Mengnu Group -- Haining  
25       Mengnu Group Co., Ltd., the plan sponsor.

1 Q. Are you familiar with the exit facility?

2 A. Yes, I'm quite familiar with the exit facility.

3 Q. What made you become so familiar with the exit facility?

4 A. I guess as much as anybody, I largely structured the  
5 facility and to the extent there were negotiations over any of  
6 its particular terms, I was involved with that.

7 Q. Thank you. Can you please explain the structure of the  
8 exit facility?

9 A. The exit facility is comprised of two components; the  
10 LOC or letter of credit component and the cash side. On the  
11 letter of credit side, it provides for a letter of credit  
12 funding to the debtors post-bankruptcy of three to five million  
13 dollars. Three million of that is currently in place. 500  
14 thousand dollars additional has begun to be worked on to come  
15 into place soon after the effective date of the plan. And the  
16 remaining million and a half dollars is available for  
17 additional funding in the form of letters of credit.

18 The use of proceeds of the entire exit facility is both  
19 for letter of credit financing to back the credit card  
20 processors and private label card programs going forward and  
21 for general working capital purposes.

22 The cash portion of the exit facility is really synonymous  
23 with the tranche E note and that's a term note.

24 Q. Thank you. Can you please describe the structure of the  
25 tranche E note?

1     A.     Yes.    The tranche E note which will be issued on the  
2     effective date will be a term note with a two-year maturity.  
3     It will be repayable in advance of the maturity date based on  
4     an excess cash flow sweep formula.   That formula provides that  
5     there needs to be a minimum cash balance in the company left  
6     after a quarterly sweep of three million dollars plus an amount  
7     over and above three million dollars needed to repay any other  
8     principal amount of debt due in that quarter.

9           So while it's an excess cash flow sweep of -- off of the  
10    cash earnings of the company, it's subject -- it only gets paid  
11    in terms of really amortization if there is a minimum cash  
12    balance in the company at the time.   I think that's based on a  
13    rolling prior thirty-day average, not just a one day cash  
14    balance.

15           The tranche E note, it will be funded by (one) rollover of  
16    any cash portion of the DIP facility that's outstanding just  
17    prior to the effective date and (two) additional cash  
18    borrowings -- sorry, cash loans from a new borrowing by  
19    Jennifer of cash.

20           Currently there's 500 thousand dollars outstanding under  
21    the cash portion of the DIP facility and it's anticipated that  
22    there would be an additional approximately 2.1 to 2.2 million  
23    dollars of new cash money coming into Jennifer on the effective  
24    date such that the total face amount of the tranche E note is  
25    expected to be approximately 2.6 to 2.7 million dollars as of

1 the effective date. And thereafter it's not a revolving  
2 facility. It's a term note.

3 Q. Thank you. Why is the tranche -- why is the cash facility  
4 in respect of the tranche E note discretionary?

5 A. Well it's discretionary in the sense that the amount --  
6 the final amount hasn't been fixed at this time. The tranche E  
7 note is being funded as I said, 500 thousand dollars out of a  
8 rollover of the DIP cash facility or a greater amount if there  
9 is more borrowing under the DIP cash facility prior to the  
10 exit.

11 The remaining portion of the facility is new cash from  
12 Mengnu. However, Mengnu expects to take cash that is currently  
13 sitting in the escrow account that's been referred to and use  
14 that cash that belongs to Mengnu in respect of goods that have  
15 been received by Jennifer for which advance payments were made  
16 and then money's been allowed to sit in escrow.

17 So and that money is -- there is continuing to be money  
18 put into the escrow account as more goods arrive from shipments  
19 arriving in the US. So that sourcing amount isn't fixed until  
20 the last moment. And also, there will be a quick look at the  
21 working capital needs of the company at that point in time,  
22 including all of the exit payments that are due.

23 Q. You mentioned the escrow account. Can you please  
24 elaborate a little bit on the structure of it?

25 A. Yes, the escrow account was established and I believe

1       there was actually a court order for the -- a comfort order for  
2       the original establishment of the escrow account. And the  
3       escrow account receives money -- the escrow trustee receives  
4       money from Jennifer for deposit money for new orders being  
5       placed with Mengnu by Jennifer. Additional monies are being  
6       paid in advance as shipments leave the port in Shanghai bound  
7       for Jennifer's warehouses in the U.S. And that's how that  
8       account gets funded by Jennifer.

9               When the goods arrive in the U.S., Mengnu can ask the  
10       trustee to release the money to Mengnu. At that point, it  
11       becomes Mengnu's property, the cash in the account. So it all  
12       points in time, there's an amount of money in the account. I  
13       think currently it's around 2.8 million dollars. Some of that  
14       is money that Mengnu could if it so chose, withdraw  
15       immediately. It's Mengnu's entitlement but it has chosen to  
16       leave it there in anticipation of funding the exit facility.

17              The other portion of money that's in the account at any  
18       given point in time is money in respect of goods which have not  
19       been received. And as of the effective date under the plan  
20       terms, Mengnu and Jennifer have agreed that money will revert  
21       back to Jennifer and Jennifer will pay for the goods in the new  
22       ordinary course of ninety-day trade terms as they are received  
23       going forward.

24              So again, those amounts are not -- they're estimated but  
25       they're not precisely known at this time.

1 Q. And what happens to the escrow account on the effective  
2 date?

3 A. On the effective date, Mengnu will -- Mengnu's intent is  
4 to use all of the money that is in the escrow account that it  
5 is entitled to receive in respect of goods previously received  
6 and use that to fund the tranche E note, along with the DIP  
7 rollover into the tranche E note and the remaining money will  
8 go back to Jennifer and the escrow account will be closed.

9 Q. Thank you. And one last question, Will Mengnu provide the  
10 exit financing if Jennifer cannot assume the TUAs?

11 A. No.

12 MR. NEIGER: No further questions, Your Honor. Thank  
13 you.

14 THE WITNESS: May I step down?

15 THE COURT: No, you have to be available to --

16 THE WITNESS: Oh, right.

17 THE COURT: -- through cross or further examination.

18 THE WITNESS: Yes, sir.

19 THE COURT: Any other examination by those who seek  
20 confirmation of the plan and/or assumption of the TUAs?

21 MR. FLEMING: None for debtor, Your Honor.

22 MR. CARR: None from the committee, Your Honor.

23 THE COURT: Anyone else? All right. Cross?

24 MR. GOLDSTEIN: I rise again, Your Honor. Thank you.

25 CROSS-EXAMINATION

1 BY MR. GOLDSTEIN:

2 Q. Mr. Sperry, Michael Goldstein, Greenberg Traurig. I  
3 represent Ashley Home Store, Ashley Furniture.

4 Mr. Sperry, the letter of credit facility you mention in  
5 your testimony, you said three million dollars of that is in  
6 place; correct?

7 A. Yes.

8 Q. Who is the beneficiary of that letter of credit?

9 A. Merrick Bank.

10 Q. And you also said there's a 500 thousand dollar letter of  
11 credit in place. Who is the beneficiary under that letter of  
12 credit? Or I am sorry, I think you said there's 500 thousand  
13 dollars that's in place or that's going -- it's in the works,  
14 if you will.

15 A. It's --

16 Q. Who will be the beneficiary under that letter of credit?

17 A. JP Morgan Chase will be the intermediate beneficiary in  
18 all likelihood. And then there will be a further beneficiary.

19 Q. I'm sorry, I --

20 A. Then there will be a further beneficiary beyond that.

21 Q. And who will that be?

22 A. It hasn't been disclosed at this point.

23 Q. It's a third-party. It's not the debtor; correct?

24 A. It's a third-party.

25 Q. Thank you.

1 A. It's a third-party who will be a private label credit card  
2 provider.

3 Q. That's -- thank you.

4 You indicate in your testimony that with the three million  
5 dollars LOC in place and assuming the 500 thousand dollars in  
6 place, that would make -- leave 1.5 million of LOC facility  
7 still available; correct?

8 A. Yes.

9 Q. And so as I understand it correctly, that would be the  
10 issuance of letters of credit in favor of third parties; is  
11 that correct? Or would the letter of credit be issued in favor  
12 of the debtors?

13 A. Well, the letter of credit would be issued in favor of  
14 third-parties. However, the exit credit facility including the  
15 letter of credit portion can be used to support in the first  
16 instance on the one hand, credit card processors or private  
17 label programs like that and working capital, general working  
18 capital uses.

19 So it's conceivable that there could be an LOC in place at  
20 some point that would be in favor of a bank and Jennifer would  
21 get cash from the bank against it.

22 Q. But the letter of credit facility, the 1.5 million would e  
23 issued in the five instance to a third-party; is that correct?  
24 Not to the debtors.

25 A. It's unlikely that it would -- there's no current plan or



1 structure envisioned that would be directly in favor of the  
2 debtors.

3 Q. Does the letter of credit facility limit the scope at all  
4 as to potential beneficiaries of the letter of credit?

5 A. You mean like an intermediate or do you mean with respect  
6 to third-parties?

7 Q. With respect to third-parties. Well, let me rephrase the  
8 question. Is there any limitation on -- for whose benefit the  
9 debtors could issue the letters of credit under that facility?

10 A. Well, the debtors won't issue the letter of credit.

11 Q. Let me rephrase the question. Is there any limitation on  
12 the letter of credit facility that would limit the debtors'  
13 ability to have issued letters of credit under that facility  
14 for third-parties?

15 A. No, because Mengnu -- well, Mengnu's not a bank, so that  
16 Mengnu has retained in its sole discretion, the ability to  
17 approve the future issuances. Again, because it's not a bank,  
18 it doesn't issue letters of credit itself. So it needs to  
19 retain that discretion because it cannot commit its own bank in  
20 advance of issuing the LC. It will go to its bank and have an  
21 LC issued, depending on what the specific need is at the time  
22 for Jennifer for either support of a credit card program or for  
23 working capital purposes.

24 Q. Okay. When you say working capital purposes in that  
25 regard, that's what I am trying to get a sense of. What do you

1 mean by working capital purposes in terms of who would be --  
2 what would be the use of that working capital with respect to  
3 the issuance of the letter of credit?

4 A. Well, for example, supposing the Ashley HomeStores  
5 operated by Hartsdale or by Jennifer -- but owned by Hartsdale,  
6 were to experience a significant increase in volume and needed  
7 to buy inventory, the tranche E note facility as I said is a  
8 fixed term facility, fixed amount. There might be a need to  
9 buy more goods from your client, Ashley, for the Hartsdale  
10 store. That could be one use.

11 Q. In your example, Ashley would have to agree to ship on the  
12 basis of the beneficiary of the letter of credit.

13 A. Not at all. They're going to be shipped COD. Why do they  
14 have to be involved?

15 Q. So then in that instance, the letter of credit would be  
16 issued to the debtor?

17 A. The letter of credit as I mentioned earlier, I believe,  
18 might be issued to a bank in the United States, let's say JP  
19 Morgan Chase where the debtor, I believe has some accounts and  
20 it might be in favor then of the debtor itself who might draw  
21 against it.

22 Q. Okay. And just so I am clear on the tranche E note side,  
23 that is a term facility, not a revolver facility.

24 A. Correct.

25 Q. And that amount will get fixed as of the effective date of

1 the plan; correct?

2 A. Correct.

3 Q. With respect to the escrow account, some of the money in  
4 the escrow account is going to be returned to Mengnu; correct?

5 A. The money that's in the account is advance payments for  
6 orders and shipments that have not been received, will be  
7 returned to Jennifer.

8 Q. So some of the monies go to Mengnu in the escrow account  
9 and some of the money in the escrow account will be returned to  
10 Jennifer; correct?

11 A. In respect of goods not received, the money goes to  
12 Jennifer and in respect of goods received, Mengnu is entitled  
13 to receive that money in its intention is to use that money to  
14 fund the tranche E note.

15 Q. Right. But in the first instance, the money goes to  
16 Mengnu and then Mengnu advances it under the tranche E note,  
17 essentially.

18 A. That would be a transactional chain that would be --

19 Q. Right.

20 A. -- technically what would happen; yes.

21 Q. Okay. So do you have an estimate of how much of the money  
22 in the escrow account will actually be released to Jennifer on  
23 the effective date, kind of rough ballpark?

24 A. Yes, the estimate -- the current estimate is about 1.2  
25 million. That would be the Jennifer -- money going back to

1 Jennifer in respect of goods not yet received.

2 Q. And is it anticipated that part of that 1.2 million  
3 dollars would be used by Jennifer to pay -- make any of the  
4 payments due on the effective date or would that be cash that  
5 would reside on Jennifer's balance sheet on the effective date?

6 A. Well, money's fungible. So there will be that 1.2  
7 million. There'll be the -- there'll be approximately 2.1 to  
8 2.2 million of new cash under the tranche E note. The other  
9 500 thousand being already funded under the DIP that gets  
10 rolled into it. That's assuming no intermediate additional  
11 borrowings under the DIP. So that -- there's a 2.1 there to  
12 2.2 on top of the 1.2. And there's whatever cash Jennifer  
13 already had -- will have had on its balance sheet as of the  
14 effective date. You could add all that up. It has significant  
15 exit payments to make such as 980 thousand dollars roughly to  
16 Ashley in respect to the Hartsdale claim, et cetera.

17 Q. So do you know what the net cash will be on the balance on  
18 the effective date after making all those payments?

19 A. The last estimate I looked at was 1.8 million dollars.

20 Q. So net net 1.8 million dollars to the Jennifer balance  
21 sheet after accounting for the tranche E note, the escrow funds  
22 and then making the effective date payments.

23 A. If you were to -- right. If you were to do full sources  
24 and uses, there'd be a -- I think -- again, the last estimate I  
25 looked at which may not be the most recent estimate, the model

1 gets updated periodically --

2 Q. Right.

3 A. -- but it was about 1.8 million of day one opening cash  
4 balance.

5 Q. And that estimate included -- I'm done, Your Honor.

6 THE COURT: Well I was going to say that --

7 MR. GOLDSTEIN: I'm done.

8 THE COURT: -- if this hearing goes on for many more  
9 days --

10 MR. GOLDSTEIN: No, I'm --

11 THE COURT: -- that 1.8 is going to be less but --

12 MR. GOLDSTEIN: No, I'm done. I can finish on that  
13 note.

14 THE COURT: Thank you. Anyone else?

15 MR. GOLDSTEIN: Not from the debtors, Your Honor.

16 THE COURT: All right. Mr. Sperry, you may step  
17 down.

18 THE WITNESS: Thank you, Your Honor.

19 (Witness excused)

20 MR. GOLDSTEIN: Your Honor, if I may?

21 THE COURT: Yes.

22 MR. GOLDSTEIN: I have the procedural issue of our  
23 exhibits.

24 THE COURT: Yes, but let's see whether the debtors  
25 have any further evidence that they wish to educe in support

1 of -- we're dealing with confirmation of the plan and  
2 assumption of the Ashley executory contracts.

3 MR. FLEMING: No more evidence, Your Honor.

4 THE COURT: All right. Anything from the committee?

5 MR. CARR: No, Your Honor.

6 THE COURT: From Mengnu?

7 MR. NEIGER: No, Your Honor.

8 THE COURT: All right. The floor is all yours, Mr.  
9 Goldstein.

10 MR. GOLDSTEIN: Thank you, Your Honor. I would just  
11 direct folks' attention to the index in our binders and I refer  
12 to the tab numbers. These will be -- we'll refer to the tab  
13 number of the documents that are used in the course of the  
14 cross-examination. So it would be tab 4 which is the Hartsdale  
15 scheduled assets and liabilities.

16 THE COURT: That's a pleading in the bankruptcy case.

17 MR. GOLDSTEIN: Correct, Your Honor.

18 THE COURT: Which I can take judicial notice of but  
19 we'll admit it as, shall we say, Ashley Exhibit 4?

20 MR. GOLDSTEIN: Yes, Your Honor. I think it would be  
21 easier if we keep the number associated with the tabs.

22 THE COURT: All right.

23 (Hartsdale scheduled assets and liabilities pleading was  
24 received into evidence as Ashley's Exhibit 4 as of this date.)

25 MR. GOLDSTEIN: The next one, Your Honor, is the

1 amended DIP budget, tab 7, which is the one that Mr. Grien and  
2 I discussed.

3 THE COURT: Any objection? Ashley Exhibit 7, the  
4 amended DIP budget and that's a pleading, too in the  
5 bankruptcy.

6 MR. FLEMING: I have no objection, Your Honor. I  
7 would just note that it's not the most current one. That's  
8 what I am told but I have no objection to --

9 THE COURT: It is -- let's see what the date is.

10 MR. FOX: 11/24.

11 THE COURT: If we can read that -- what was the date,  
12 November 24?

13 MR. FLEMING: November 24, 2010.

14 THE COURT: November 24 DIP budget. All right.  
15 Admitted.

16 (Amended DIP budget dated 11/24/10 was received into evidence  
17 as Ashley's Exhibit 7 as of this date.)

18 MR. GOLDSTEIN: The next one, Your Honor, is tab 9  
19 which is the August 17 letter from Mr. Schultz to Mr. Fox.

20 MR. FLEMING: Your Honor, I have an objection to that  
21 letter. I just don't think it's -- have been authenticated by  
22 anybody, first of all and I don't think it's particularly  
23 relevant what one lawyer wrote to another about documents.

24 THE COURT: Well --

25 MR. FLEMING: They were smart to serve a document --

1 THE COURT: -- do the debtors deny that -- again, Mr.  
2 Fox was a recipient. Did you -- we don't want to put Mr. Fox  
3 on the stand. I assume you received Exhibit 9 shortly after  
4 the date it bears.

5 MR. FLEMING: Right. We acknowledge receipt of the  
6 letter, Your Honor.

7 THE COURT: All right. I'll admit it.  
8 (August 17 letter from Mr. Schultz to Mr. Fox was received into  
9 evidence as Ashley's Exhibit 9 as of this date.)

10 THE COURT: Okay.

11 MR. GOLDSTEIN: Thank you, Your Honor. Your Honor,  
12 the next three documents 14, 15 and 17, those are also  
13 documents as part of the file.

14 THE COURT: They're monthly operating -- well, 14 is  
15 a monthly --

16 MR. GOLDSTEIN: Two monthly -- there's a monthly  
17 operating reports and the disclosure statement.

18 MR. FLEMING: No objection, Your Honor.

19 THE COURT: All right. Admitted.

20 MR. GOLDSTEIN: 14, 15 and 17.

21 (Monthly operating report and disclosure statement were  
22 received into evidence as Ashley's Exhibits 14, 15 and 17 as of  
23 this date.)

24 MR. GOLDSTEIN: Your Honor, at tab 22 these were the  
25 balance sheets, pages AH-001, AH-005 only. Those were the only



1 pages we referred to. I think these overlap to some extent  
2 with the plaintiff's exhibit but just to keep the record clear,  
3 I'd like to make sure that the documents we referred to as tab  
4 22 are part of the record.

5 MR. FLEMING: No objection.

6 THE COURT: All right. Hold on. Let me just make  
7 sure I at least can follow along. Okay. Tab 22. That's the  
8 balance sheet from 2009.

9 MR. FLEMING: Correct, Your Honor.

10 THE COURT: All right.

11 MR. GOLDSTEIN: And just pages AH-001 to AH-005.

12 THE COURT: That's okay.

13 (2009 balance sheet pages AH-001 to AH-005 were received into  
14 evidence as Ashley's Exhibits 22 as of this date.)

15 THE COURT: All right.

16 MR. GOLDSTEIN: Your Honor, we also marked two  
17 exhibits that weren't in the binder. Well, we referred to  
18 them, we didn't mark them. One was the TUA with respect to the  
19 Carle Place.

20 THE COURT: I think that's in the record. That's in  
21 evidence already.

22 MR. GOLDSTEIN: It is, Your Honor. I just -- I might  
23 since --

24 THE COURT: Do you want it in as --

25 MR. GOLDSTEIN: If we could keep it as tab 29 and

1 just make it a clear part of the record, since that's the one  
2 that I referred to so many times. I think it would just be  
3 easier if there was ever a need to look at the transcript.

4 MR. FLEMING: I have no objection, Your Honor. It's  
5 in --

6 THE COURT: All I'd ask you to do then is mark it.

7 MR. GOLDSTEIN: I have a copy.

8 THE COURT: And hand it up.

9 MR. GOLDSTEIN: I could submit it when I finish.

10 THE COURT: Mark it as Exhibit -- as Ashley Exhibit  
11 29.

12 (TUA with respect to Carle Place was received into evidence as  
13 Ashley's Exhibits 29 as of this date.)

14 MR. GOLDSTEIN: Right. And then, Your Honor, the  
15 last one is actually the second amended secured exit credit  
16 agreement that Mr. -- I'm sorry.

17 MR. FLEMING: Grien.

18 MR. GOLDSTEIN: -- Mr. Grien was cross-examined by  
19 Mr. Neiger and then I did some examination, as well.

20 THE COURT: All right. That is --

21 MR. GOLDSTEIN: I would like to mark that as Ashley  
22 tab number 30. That was the document, Your Honor, 1185035-1.  
23 I would offer --

24 THE COURT: Give me that number again.

25 MR. GOLDSTEIN: It's the secured credit agreement.

1 THE COURT: Yes, amended --

2 MR. GOLDSTEIN: It's second amended secured exit  
3 credit agreement. That's what it says on the first page. And  
4 then the document itself, the secured exit credit agreement  
5 document for the --

6 THE COURT: Yes, the stamp --

7 MS. NADRITCH: Your Honor, it's --

8 THE COURT: The computer number on the bottom.

9 MR. GOLDSTEIN: 1185035-1.

10 THE COURT: 035-1. Now that is your Exhibit --

11 MS. NADRITCH: 5 double --

12 THE COURT: B?

13 MS. NADRITCH: No, it's actually -- it's in your  
14 third binder, Your Honor and it's tab 5-AA.

15 THE COURT: Okay.

16 MR. GOLDSTEIN: If we could just mark --

17 THE COURT: But if you would mark another version  
18 then as Exhibit 30 --

19 MR. GOLDSTEIN: Tab 30.

20 THE COURT: -- for Ashley, we can try to keep the  
21 record straight.

22 MR. GOLDSTEIN: Thank you, Your Honor.

23 (Second amended secured exit credit agreement 1185035-1 as  
24 received into evidence as Ashley's Exhibit 30 as of this date.)

25 MR. GOLDSTEIN: I have those marked, Your Honor, if I

1 may approach.

2 THE COURT: You can hand those up, sure.

3 MR. GOLDSTEIN: Thank you.

4 THE COURT: All right. Any other evidence for  
5 Ashley?

6 MR. GOLDSTEIN: That's it, Your Honor.

7 THE COURT: All right. Then anything else from any  
8 other party or I will deem the record closed on both the  
9 debtors' motion to confirm the plan of reorganization and the  
10 debtors' motion to assume the Ashley contracts.

11 Now with regard to the motion to assume the  
12 contracts, I understand the record stands. The arguments  
13 stand. I have Ashley's memorandum of law. I gather that there  
14 is no dispute that if the contracts are to be assumed, there is  
15 a minimum cure due on the effective date of just under a  
16 million dollars, 980 thousand --

17 MR. FOX: And some-odd change.

18 THE COURT: And some change. There may be further  
19 amounts due and those can be established at a subsequent  
20 hearing if the parties don't agree. I don't know exactly what  
21 those amounts entail. They may entail attorney's fees. They  
22 may entail other items and perhaps it's a moving amount,  
23 depending upon the business arrangements between the parties.

24 If there is a request for attorneys fees, I think it  
25 should be made relatively promptly or a request for other cure

1 amounts and if there's a request for attorneys fees, it should  
2 be supported with the claim of right, whether as a matter of  
3 cure under Section 365 of the Bankruptcy Code or as a matter of  
4 right under the contract itself.

5 Other than that, I gather that unless the parties  
6 wish to have further argument and I can certainly take that  
7 now, we have a little bit of time, and we have more time if the  
8 parties want it. I'm not trying to rush anyone, either  
9 argument or further explication of any of the issues. Anything  
10 further from the debtors?

11 MR. FOX: I would just -- Michael Fox for Jennifer.  
12 I would just like to make a brief summation, perhaps clarify a  
13 few things. We have filed a notice of proposed confirmation.  
14 We have filed a memorandum of law. I think there's been  
15 testimony that's been made today, both in the form of the  
16 direct affidavits of Mr. -- the declarations of Mr. Abada and  
17 Mr. Grien subject to the cross. So everything that was heard  
18 today is not necessarily what's before Your Honor because those  
19 exhibits have been read and have been filed.

20 I think what is obvious is that the company, I think  
21 Your Honor stated this early on, things change. The company in  
22 2009 or 2008 when it opened up the first Ashley store was one  
23 or two. The dynamics changed to where it's now six stores.  
24 Six stores, the way you try to integrate that operation is  
25 probably a lot different than it was when it was two because at

1 the same time, Jennifer's segment was almost three hundred  
2 stores. It's now been reinvented and restructured.

3 THE COURT: How many stores are left?

4 MR. FOX: Right now, I think seventy-three.

5 THE COURT: Okay. The TUAs, and I could ask Mr.  
6 Goldstein this question, what is the term of those agreements  
7 since there are a whole bunch of different ones?

8 MR. FOX: Okay. They all have different expirations,  
9 from the earliest part their initial term is five years and  
10 then since they're in the record, there's another section that  
11 talks about a renewal for another sixty months. So they  
12 basically can go out to -- you know, if the first one was 2008,  
13 it will expire in 2013, and then at 2018. I think that's  
14 pretty much why the EBITDA went out to that level because at  
15 that point, they were assuming that there may not be renewed  
16 beyond the five-year period and the initial period.

17 THE COURT: Okay.

18 MR. FOX: But they all have different rolling basis,  
19 depending on when they started. So I can't -- I have a chart  
20 somewhere.

21 THE COURT: No, that's okay. That gives me a good  
22 enough feel there. There were some dates in here. I recall  
23 something like those dates. I just wanted to clarify it.

24 MR. FOX: I think that's why, in fact, Your Honor, we  
25 only carried out the projection to 2018 because you had to make

1 a decision at that point and we hope we make it that far with  
2 Ashley as our partner, that the company will in fact not be six  
3 stores -- of Ashley stores but perhaps it will be eight, ten,  
4 twelve and the relationship will be smooth and running. But  
5 the projections that are before Your Honor assumed no new  
6 stores that were being opened. That doesn't mean that there's  
7 not a constant dialogue. There has been. There are sites that  
8 we have that we -- that the company could be excited about  
9 going into and again, once we hope -- and the expectation if we  
10 can get out of Dodge, as I have been so-saying to my client,  
11 they can get away from having to deal with the bankruptcy life,  
12 they could start to figure out really how to retool their  
13 business and focus more on not the bankruptcy but the business  
14 which really, you know, as any business does, it needs a lot of  
15 TLC.

16 What it has today is it has some financing and it has  
17 the ability to get out but what it really needs is to just try  
18 to put this in its distant path. I think that there was a lot  
19 of questions or confusion. Maybe Mr. Abada didn't know why  
20 Hartsdale filed. Let me just tell you this, Your Honor. It  
21 would be disingenuous if the Ashley counsel disagreed, if  
22 Jennifer were to file and not have filed Hartsdale, that would  
23 have triggered a default under the TUA. And then we wouldn't  
24 be able to have the protection of the stay that we have.

25 So there's no deep dark secret of why an entity files

1 its entities but there was actually a very good reason because  
2 if Jennifer filed TUA -- it would be a default if Jennifer's a  
3 guarantor under the TUAs. So that's the simplest answer.

4 The more complicated answer is that some of the  
5 finances were in a cash management system and the money was  
6 technically in a JCI concentration account/Ashley, but the real  
7 reason is we just needed to be smart about gathering what was  
8 important to protecting what we deemed to be -- and it's not  
9 disputed. It's a valuable asset. We want to preserve it. We  
10 want to nurture it. We want to grow it.

11 We can have a legal argument on whether paid all sums  
12 means that Ashley has this requirement to require that we pay  
13 all those Hartsdale creditors. That's contrary. They're not  
14 the committee for the Hartsdale entities. They're an  
15 unimpaired creditor or they will in that estate.

16 Mr. Carr's more than capable. Deloitte was  
17 representing the financial advisors. They looked through a lot  
18 of things that were important. This case, Your Honor, is on --  
19 it has -- and I consider it to be a fast track case. It has  
20 done a lot in a very short period of time but to sit here today  
21 and think that the case would collapse because there's an  
22 argument on a paid in full or paid all sums due is almost an  
23 insult to the integrity of the plan, to the disclosure  
24 statement that has been approved and actually solicited by all  
25 the vendors that are out there.



1           So I have, I believe, satisfied the burden, to  
2       establish the evidence, Your Honor, before you would be  
3       sufficient and I've had my COO who was also the CFO and the  
4       President who is familiar with the supply chain, testify about  
5       his industry experience, testify why the case was filed,  
6       testify about the projections being reasonable, disclosing all  
7       the things that are required as my memorandum of law says that  
8       would require us under 1129 to get this case confirmed.

9           And I can go on and I can go on; I prefer not to. I  
10      think the record is pretty clear. There are jobs at stake.  
11      There are obligations that could be met. There's nobody --  
12      nobody took that stand, neither Mr. Sperry, neither Mr. Abada,  
13      or neither Mr. Grien and guaranteed success. What they all  
14      would testify to is that there's a reasonable likelihood that  
15      the plan obligations could be met, give them a chance to  
16      reorganize and to affirm all the obligations that are owing  
17      under the plan and under the TUA.

18           Once we assume the TUA, all those obligations are  
19      being reaffirmed. Mr. Abada wasn't perfect about the  
20      reporting. Nothing in life is perfect, Your Honor, but it will  
21      be and they will exercise all their best efforts to comply with  
22      those. And if they're not, communication which is a very  
23      important skill to have that I believe Mr. Abada will have with  
24      his management team, speak to the people in the management at  
25      Ashley and just get beyond this, so that this case can move

1 forward, whether it's 980, a million-one; the plan does give a  
2 process for that. I'm just surprised that the number is not  
3 what they put in their motion but there will be a process for  
4 that like everything else. There will be sufficient money.  
5 There's -- I don't think that's been a dispute.

6 So I really would move this -- for Your Honor to do  
7 two things; grant the motion to allow us to assume the TUAs and  
8 to allow us to confirm our case under 1129. We worked very  
9 hard to get here, Your Honor and we hope never to see you again  
10 before in this case, other than for some cleanup and some fee  
11 applications and post-effective reports, but Jennifer hopes not  
12 to ever become a Chapter 22, so that we can move beyond.

13 THE COURT: I think I can take judicial notice of  
14 every debtors' desire to --

15 MR. FOX: Well I think that --

16 THE COURT: -- stay out of bankruptcy court.

17 MR. FOX: And I think that we've at least established  
18 that we have some of the tools within which to meet our  
19 obligations under the plan and to successfully emerge and stay  
20 away. And to continue to operate, so that they can grow. Mr.  
21 Abada's not rooting for the economy not to improve and not for  
22 consumer spending to be up. He just wants to be there at the  
23 right time, the right place, so that his business could take  
24 advantage of that and unlike any business in America, including  
25 law firms and financial accounting firms.

1           So we thank Your Honor very much for the time you've  
2       taken today. Don't need to go I think in anything further than  
3       just to say that I hope that we have established sufficient  
4       information before you, Your Honor, that this case can confirm  
5       and the TUAs can be assumed. Thank you.

6           THE COURT: Thank you. Anyone else who wishes to  
7       speak in support of plan confirmation and/or assumption of the  
8       TUAs?

9           MR. CARR: Thank you, Your Honor. Jim Carr of Kelley  
10      Drye & Warren on behalf of the committee. Your Honor, I'd like  
11      to focus my comments on two points; 1129(a)(11), feasibility  
12      and 365(b) which is the cure and assumption provisions of the  
13      Code. But before getting into those two provisions of the  
14      Code, I would like to just give some general comments.

15           Your Honor, this case filed in mid-July and as Your  
16      Honor recalls, when we came -- when the committee was first  
17      formed and I appeared before Your Honor at one of the first  
18      hearings, there was significant concern on my behalf and the  
19      committee's behalf that we would be here; that we would get to  
20      today.

21           There was a belief that I had and the committee  
22      members had that we thought this case was going to liquidate.  
23      And it was only through the very strong efforts of debtors'  
24      counsel, Mengnu's counsel and committee, that we were able to  
25      get here today. And as a result of that, Your Honor, four

1 hundred employees will continue to have a job, eighty stores  
2 will continue to go forward selling Jennifer or Ashley -- and  
3 Ashley goods.

4 And that, Your Honor, cannot be underestimated  
5 because it was a lot of give and take in this process and a lot  
6 of professionals got together, so that we could get to a  
7 confirmed plan of reorganization. We had a nine member  
8 committee and not all the members saw things identically or the  
9 same.

10 THE COURT: I would hope not. Was Ashley a member?

11 MR. CARR: Ashley was not a member of the committee,  
12 Your Honor. And when it got to the voting -- what's  
13 interesting, when it got to the voting, out of all the  
14 creditors eligible to vote, you had ninety-three percent of the  
15 creditors voting in support of the plan, four of whom were at  
16 the Hartsdale entity.

17 And by the way, Your Honor, Brent Associates, who is  
18 one committee member, is also at the Hartsdale -- is a creditor  
19 of the Hartsdale entity. And Brent Associates also voted to --  
20 voted in favor of the plan.

21 Your Honor, feasibility -- I think there's obviously  
22 enough evidence presented in the record in connection with  
23 feasibility. And the documents that were filed, the legal  
24 documents that were filed, there's one decision, Your Honor, I  
25 would like to bring to your attention by a learned judge in the

1 Journal Register decision and the judge in that case said,  
2 feasibility standard requires and I quote, "reasonable  
3 assurance of success. Success need not be guaranteed."

4 THE COURT: I don't think I made up that language. I  
5 was quoting somebody else.

6 MR. CARR: You were quoting someone else but I  
7 thought that decision was the best to bring to Your Honor's  
8 attention. The test is whether things that are to be done  
9 after confirmation in a plan, if there's a reasonable  
10 likelihood that they will be done, that's feasibility. Nothing  
11 more. Nothing less.

12 Your Honor, turning to 365(b), I have to give Mr.  
13 Goldstein credit. His arguments in connection with the TUC,  
14 specifically paragraph 4 was I think very creative.  
15 Specifically, the language about paying all sums due, other  
16 parties with which the licensee, i.e., the debtors conduct  
17 business. Now if you look at that provision, Your Honor, I can  
18 come up with a number of legal arguments. I can create  
19 legalese. The words, "all sums due" what does that modify?  
20 Does that modify other licensed -- other parties or does that  
21 modify just the owner and Ashley?

22 I can also come up with further legal arguments,  
23 legalese -- what I'll call legalese-type arguments. What does  
24 due mean? Does due mean what the creditors are getting under  
25 the plan? Does it mean paid in full? These are all issues

1       that certainly Your Honor can consider.

2               But I am going to give a pragmatic answer to this  
3       provision, Your Honor. If Your Honor accepts this provision as  
4       the way Mr. Goldstein suggests then we might as well take 365  
5       and take it out of the Bankruptcy Code because what will happen  
6       is every executory contract will have this provision that will  
7       say you cannot -- debtor, forget -- I'm not talking now about  
8       assignment, I'm not talking about 365(e) or 365(f) dealing with  
9       assignments and ipso facto clauses. But if you have a  
10      provision in a contract that says counterparty debtor cannot  
11      assume this agreement unless all of its other creditors are  
12      paid in full. There will never be another assumption on a  
13      going forward basis. That's the only point I want to make with  
14      respect to that provision, Your Honor. Thank you.

15             THE COURT: Anyone else wish to speak in support of  
16      confirmation? All right.

17             MR. NEIGER: Your Honor, if I may?

18             THE COURT: Yes, you will not lose any ground if you  
19      do not make any statement but you certainly may.

20             MR. NEIGER: My client has been the one who has been  
21      pushing timing all along. So I certainly am not going to delay  
22      it any further than absolutely necessary. So I incorporate by  
23      reference the comments of Mr. Fox and Mr. Carr and I agree with  
24      everything they said.

25             If I may, I would just like to read one portion of

1 the TUA that I think will shed some further light on the spirit  
2 of the TUAs and the spirit of the case going forward. And that  
3 is paragraph 17 and it says:

4 "Licensee acknowledges and agrees that licensor's  
5 acceptance of the authorized location shall not be deemed as  
6 constituting a guarantee, recommendation, warranty,  
7 representation or assurance by licensor that the authorized  
8 location is capable of supporting a successful retail furniture  
9 store."

10 A similar paragraph is in the acknowledgement and  
11 addendum to the Ashley HomeStores where again it states, and  
12 this is paragraph 3 to the beginning of that, "The undersigned  
13 acknowledged that licensee understands that there exists no  
14 guarantee against possible loss or failure in this or any other  
15 business. And that the most important factors in the success  
16 of the licensed business are the licensee's personal business,  
17 marketing, sales, management, judgment and other skills."

18 There can never, ever be a guarantee of future  
19 performance but what we have demonstrated today is that there  
20 is a very strong likelihood of success. The debtors have made  
21 painstaking concessions in closing stores, in negotiating  
22 leases, in obtaining financing and this company has a very  
23 bright future. Thank you, Your Honor.

24 THE COURT: Anyone else?

25 (No response)

1 THE COURT: All right. In opposition?

2 MR. GOLDSTEIN: Thank you, Your Honor. The Ashley  
3 segment has a very bright future and has had a very successful  
4 past. The evidence was clear. Contrast, the Jennifer segment  
5 is operating at a loss, a substantial loss and its  
6 profitability in 2018 should it get there, would be a mere 800  
7 thousand dollars. This is a restructuring, Your Honor, built  
8 on the back and the foundation and the cash flow of the Ashley  
9 segment, beginning and end of the story.

10 The TUAs have a five-year time frame. Whether there  
11 is a renewal provision, whether they get renewed or not, we  
12 don't know and that's not before you and we haven't made an  
13 issue but since Your Honor asked, it's really -- they have a  
14 five-year life. And the question is what happens after that?

15 I make that point only so the record is clear that  
16 I'm not agreeing with Mr. Fox that there's some kind of  
17 automatic renewal. There's a specific procedure but we haven't  
18 made that an issue, so I am not raising it in closing for  
19 purposes of that, suggesting there's some uncertainty with  
20 respect to that, just for reservation of rights.

21 But my point, Your Honor, is that the issue of this  
22 company's ongoing business is clear that it's being  
23 restructured on the back of the Ashley segment. What does that  
24 mean?

25 THE COURT: Well what does that mean?



1 MR. GOLDSTEIN: What --

2 THE COURT: I understand your argument but as a  
3 matter of good bankruptcy policy, what does that mean? Does  
4 that mean that if there's a strong part of a business and a  
5 weak part, that we should destroy the business all together by  
6 liquidating it? No. You're shaking your head no.

7 MR. GOLDSTEIN: No, no, Your Honor. That is not  
8 our --

9 THE COURT: No. If there's a strong part and a weak  
10 part, does that mean that we should divorce the two and say we  
11 should close all the weaker stores and go forward only with the  
12 strong part of the business? Is that -- that's not what  
13 Ashley's arguing, is it?

14 MR. GOLDSTEIN: That's not what we're arguing, Your  
15 Honor.

16 THE COURT: Okay. As a matter of sound bankruptcy  
17 policy, what should we do?

18 MR. GOLDSTEIN: One, Your Honor, we had a real  
19 problem with disclosure because the evidence educed today is  
20 not the evidence in the disclosure statement. Hartsdale  
21 creditors never heard about its cash or its accounts  
22 receivable. Hartsdale creditors never saw a liquidation  
23 analysis. And Hartsdale creditors never saw or had an  
24 opportunity to understand the extent to which there was this  
25 ongoing support. So there's a disclosure issue, Your Honor;

1 fundamental. And it runs -- it's a pervasive problem, frankly.

2 THE COURT: So what do I do? Do I deny confirmation  
3 all together or do I have the few Hartsdale creditors, other  
4 than Ashley, resolicit it?

5 MR. GOLDSTEIN: You could resolicit them, Your Honor,  
6 but you still have the issue --

7 THE COURT: Or simply say the debtors can confirm the  
8 plan but we have to deem them unimpaired.

9 MR. GOLDSTEIN: The latter, Your Honor, is I was just  
10 going to say, you could clearly solicit -- I'm not suggesting  
11 that. I think the argument we've made and I appreciate Mr.  
12 Carr's comments, although I am not going to repay them by  
13 suggesting his comment reply was as creative because I think  
14 it's wrong, but -- that's a little tongue-in-cheek, Mr. Carr.  
15 We've known each other for a while.

16 But, Your Honor, the legal bankruptcy issue next  
17 after disclosure is 365 and it is the issue of cure. And as I  
18 said in my opening arguments, the issue under a license where  
19 you have a licensor who has accessorially list vendors and whose  
20 name is attached to that business, and whose trademarks and  
21 goodwill and reputation and brand are part of that business,  
22 they have a direct and important interest those vendors being  
23 taken care of.

24 And I can't worry, Your Honor, and I don't think it's  
25 appropriate for this court to consider what the implications

1 are or are not with respect to a particular bankruptcy issue.

2 In this district in the Enron case, people said at  
3 one point that the secondary markets would fall apart if you  
4 didn't -- if you had buyers of debtor be subject to fraudulent  
5 conveyance risks and we had the whole issue in the Enron case.  
6 I mean we hear that argument time and time again.

7 People -- bankruptcy judges make decisions and  
8 financial markets respond. What we have to deal with today,  
9 Your Honor, and what Your Honor has to deal with is these TUAs,  
10 these facts and circumstances and what's appropriate under the  
11 law, under these circumstances. And what these TUA say is that  
12 this debtor had an obligation to pay all sums due. And when we  
13 look at --

14 THE COURT: All sums due?

15 MR. GOLDSTEIN: To the third-parties who do business  
16 with the licensee. And it also says further in 27(h) -- it  
17 doesn't -- it says, "and if any amounts are not paid," so it  
18 actually goes even further, "it's a default."

19 So while I appreciate Mr. Carr's attempt to parse the  
20 ordinary English language as to what all sums due means, I  
21 think 27(h) makes it pretty clear that if any amount is not  
22 paid, it's a default.

23 And again, Your Honor, it's a default vis-a-vie  
24 Ashley. It's not a default that the vendor can take advantage  
25 of. It's not a vendor issue. They have their own contractual

1 rights. They're not third-party beneficiaries. But so, Your  
2 Honor, I do believe that --

3 THE COURT: And explain to me Ashley's interest in  
4 payment to the third-parties.

5 MR. GOLDSTEIN: Ashley's interest in paying vendors  
6 with respect to the Ashley segment is its name, its marks, its  
7 brand, and its goodwill that's on the door.

8 THE COURT: And tell me who, identify some of these  
9 unpaid parties in this case that Ashley's concerned about.

10 MR. GOLDSTEIN: Your Honor, if we -- the schedule of  
11 assets and liabilities which was one of the documents we looked  
12 at has 1.6 million of vendors; one of them is Ashley.

13 THE COURT: How much is that of Ashley? Well the  
14 record will show.

15 MR. GOLDSTEIN: The record shows, Your Honor. I  
16 think it's roughly 800 or 900 thousand dollars.

17 THE COURT: All right.

18 MR. GOLDSTEIN: And then there's a bunch of  
19 landlords, I believe.

20 THE COURT: Yes.

21 MR. GOLDSTEIN: And then there's a bunch, a number --  
22 the rest of them are vendors, merchants. Now I don't think  
23 that's a complete list. Your Honor has asked me that before.  
24 I can only deal with what I have in terms of the debtors'  
25 disclosures.

1 THE COURT: I have a record. That's all I have.

2 MR. GOLDSTEIN: But there are other creditors there  
3 and there's a number of vendors, merchandise vendors, who are  
4 on that list. And they didn't have Hartsdale liquidation  
5 analysis. They didn't have Hartsdale information. In fact,  
6 they had on their schedule, a schedule that says no cash and no  
7 accounts receivable.

8 So if we try to make a determination, well what's  
9 fair to them, well they didn't really have all the information  
10 to make a decision but again, it's not their issue. It's my  
11 issue. And my issue is can you cure? And I'm saying, Your  
12 Honor, you can cure. It just costs you some money and it may  
13 not be that much of a dollar amount if somebody did their  
14 homework and I'm -- and it may not, in fact, curtail or derail  
15 this reorganization because, in fact, apparently there is some  
16 money as of the effective date; 1.8 million. I don't know. It  
17 wasn't clear to me just how much really was available but if we  
18 assume that, then there is money to pay them.

19 So it's not a question of stopping the railroad  
20 train, Your Honor. It's a question of making sure that the  
21 track and the railroad are running on the straight and narrow  
22 path and we're doing things the right way. That's the nice  
23 thing about these -- of having the opportunity to come before  
24 Your Honor that we get to stop and say if we missed something,  
25 if we made a wrong assumption, if we haven't done something,

1 somebody else gets to decide if we can't rely upon it.

2 As I said, we're not trying to stop the  
3 reorganization. We're trying to resolve this. But there is a  
4 fundamental difference. Some people didn't think they had to  
5 deal with this. We do and it's an important issue to us. So  
6 that's the 365 issue with respect to cure.

7 The other cure issue, Your Honor, is the non-monetary  
8 default with respect to the provision of information. I would  
9 simply note that the first two sentences of paragraph 24 don't  
10 require a request. The information Mr. Abada testified was not  
11 provided. The information was provided in '09 but not in '10.  
12 And that's a default.

13 I think the more important 365 issue or the other two  
14 365 issues are (1), the assignment issue and then the adequate  
15 assurance. The assignment issue, Your Honor, I am not going to  
16 belabor. You've heard it before from my colleague, Mr. Schultz  
17 and I just need to point it out for purposes of the record. I  
18 think it's actually a very strong argument here, not only --

19 THE COURT: What was that issue?

20 MR. GOLDSTEIN: Whether or not the assumption is  
21 really a de facto assignment.

22 THE COURT: Mr. Schultz specifically stated that he  
23 was not relying on that issue. He said so on the record.

24 MR. GOLDSTEIN: Right.

25 THE COURT: And I assume you're not countervailing

1 anything he said.

2 MR. GOLDSTEIN: Not countervailing there. We just  
3 want to preserve it for the record, Your Honor, but we're not  
4 arguing it.

5 THE COURT: There's nothing to preserve.

6 MR. GOLDSTEIN: Okay.

7 THE COURT: He said he wasn't making the argument.

8 MR. GOLDSTEIN: Okay. Then Your Honor --

9 THE COURT: If you're making the catapult argument  
10 here --

11 MR. GOLDSTEIN: I'm not -- no, no, no.

12 THE COURT: -- for appeal --

13 MR. GOLDSTEIN: No.

14 THE COURT: -- I would like to know that.

15 MR. GOLDSTEIN: No, no. I'm sorry, Your Honor. No.  
16 I'm not making the catapult argument.

17 THE COURT: All right.

18 MR. GOLDSTEIN: No, no, Your Honor, we're not.

19 THE COURT: All right.

20 MR. GOLDSTEIN: That's --

21 THE COURT: Next issue?

22 MR. GOLDSTEIN: I apologize. I didn't mean to  
23 confuse or make that ambiguous.

24 The issue that I think in terms of the assignments,  
25 not the catapult issue, Your Honor but to the adequate

1 assurance issue, so let me turn to that one.

2 THE COURT: All right.

3 MR. GOLDSTEIN: Okay? The adequate assurance issue  
4 has two components; one is the ability to comply with the  
5 ongoing TUA obligations. We went through them in ad nauseum.  
6 I am not going to repeat what Mr. Abada said. We expect full  
7 reporting. We do think that from the confidentiality  
8 perspective under that provision, the debtor should confirm  
9 that confidential information won't be provided to the plan  
10 sponsor. The debtors' been able to operate long before the  
11 plan sponsor's involvement in this case without doing that.  
12 And we think that it's as a matter of adequate assurance, they  
13 shouldn't receive that information.

14 The adequate assurance issue that I want to focus you  
15 on, Your Honor, is the issue of the structural relationship  
16 between Hartsdale and Jennifer. It's a variant on the  
17 feasibility issue, Your Honor. It's what I was thinking when I  
18 said assignment but not in terms of the catapult. It's the  
19 fact that we see this process of assumption and the structure  
20 of this debtor being one where, in fact, the obligation to  
21 perform, the financial obligations to perform and we went  
22 through a number of those obligations, other than ones which  
23 require payment to Ashley, payment to the vendors on an going  
24 basis, performing all of the obligations that require the  
25 expenditure of funds, protecting the brand, et cetera, is it --



1 requires under the debtors' proposed restructure, complete and  
2 utter dependence on cash flow coming back from Jennifer since  
3 it's all cash swept out of Hartsdale.

4 Their suggestion wherein Hartsdale maintained  
5 hundreds if not millions of dollars of cash balances will now  
6 be 100 thousand dollars is illusory. And while yes, the debtor  
7 will have cash on the balance sheet of around two million  
8 dollars, there is no more term E note availability. I think  
9 that testimony was very clear. And at best, there's a million-  
10 five of a letter of credit which it's not clear from the  
11 testimony whether that can or cannot be issued back to the  
12 benefit of the debtor but will give them the benefit of the  
13 doubt.

14 Your Honor, on a business of eighty million dollars  
15 of net sales, that's not a tremendous amount of flexibility and  
16 what you're doing by allowing all of the funds to go out of  
17 Hartsdale is you're making Hartsdale now dependent --  
18 Hartsdale's creditors including Ashley, who we're really  
19 speaking for, in terms of adequate assurance, dependent upon  
20 the good fortunes of Jennifer, a business that has been and is  
21 today failing, a business that doesn't account for any  
22 significant portion of the calendar year 2011 EBITDA according  
23 to the testimony in their own projections. So when we just  
24 look at where this snapshot is on confirmation, I don't believe  
25 they've met their burden of proving adequate assurance or

1 future performance.

2 With respect to the plan, Your Honor, I've touched on  
3 the disclosure issue, so I am not going to repeat that. We've  
4 raised that in the brief. I think the failure to do a  
5 liquidation analysis is a really, really difficult one to  
6 overcome.

7 THE COURT: For Hartsdale.

8 MR. GOLDSTEIN: For Hartsdale; yeah.

9 THE COURT: All right.

10 MR. GOLDSTEIN: But I think Your Honor, the  
11 disclosure issue as I said, is really the difficult one because  
12 they presumed an answer in this case day one which is that you  
13 could do substantive consolidation on an affirmative basis,  
14 really directly in violation with what Owens-Corning and the  
15 progeny have talked about in terms of substantive  
16 consolidation.

17 The notion that you can do procedural substantive  
18 consolidation and waive away the debtors, create one class and  
19 not allow class voting, and not even give people the  
20 opportunity to understand what those classes are entitled to,  
21 and on the other hand say actually well it's difficulty, which  
22 it really wasn't, or it's impossible, which meant according to  
23 Mr. Abada, you had to get it down to the penny which is I don't  
24 think it's a standard that anybody thought when you read  
25 impossible, is very difficult to overcome.

1           And what I think it does, Your Honor, from my  
2           perspective is it affects more this issue of how you think  
3           about cure of those vendors.

4           THE COURT: All right. Well, let me see if I  
5           understand your theory --

6           MR. GOLDSTEIN: Well, could I just -- okay.

7           THE COURT: -- your argument.

8           MR. GOLDSTEIN: All right. One more point but --

9           THE COURT: Go ahead. Finish.

10          MR. GOLDSTEIN: No.

11          THE COURT: And then I'll ask you the question.

12          MR. GOLDSTEIN: Yeah, just one more point. I will  
13          make it very quick, Your Honor, because I know everyone wants  
14          to get out of here and I appreciate the Court's --

15          THE COURT: No, we have all the time --

16          MR. GOLDSTEIN: No, I know.

17          THE COURT: -- in the world.

18          MR. GOLDSTEIN: I am not feeling pressured. I am not  
19          suggesting that my time is being limited in its -- believe me,  
20          we've spent a lot of time.

21                And I think on the feasibility issue, Your Honor,  
22                nobody's saying it's a guarantee. Nobody's saying that you  
23                have to do exactly a hundred percent when your projections say  
24                -- but what the case law does say is you have to have a  
25                reasoned basis for what you project. It can't be based upon

1 your belief. It can't be based upon your hopes and desires.  
2 It can't be speculative. There has to be some there there,  
3 other than a cheerleading squad that says boy, this is great.  
4 Our alternative is terrible. This is great. Now they're  
5 not -- the sixteen million dollar supplier in this case who  
6 wants to own this company is willing to fund it and boy, that's  
7 great. Let him have it because we have a chance for success.

8 I get the cheerleading. I don't get the substance.  
9 Because the substance you have in Exhibit C to the disclosure  
10 statement and the declarations are a bunch of numbers on a  
11 page. Nobody's told you how they got there, why they got  
12 there, why they're reasonable, why five percent isn't three  
13 percent or five percent maybe isn't six percent.

14 THE COURT: Well, I'll make that decision based on  
15 the record. The record as a whole shows no countervailing  
16 testimony whatsoever. You have made arguments against the  
17 projections in the record. You certainly cross-examined Mr.  
18 Grien, but you have had an opportunity to put in your own  
19 record and there's nothing. So I'll make that decision on the  
20 record.

21 But let me ask you the question I had and that is  
22 what do you want me to do? There are two things I can do today  
23 because you've made two different arguments, if I'm -- I can.  
24 I'm not saying today. But there are two things I can do; one  
25 is, I can say TUAs are assumed, the plan is confirmed but the

1 debtors either have to resolicit the few creditors of  
2 Hartsdale, of the Ashley company and we'll see where they  
3 stand. I'm not saying I am going to do that. That's one thing  
4 I could do.

5 Or I could deny confirmation of the plan. We could  
6 liquidate these companies. Ashley gets the TUAs back, which  
7 may be or may not be what it wants but we'll put that question  
8 aside and everybody gets liquidated because you say there are  
9 some issues relating to feasibility which is a question  
10 obviously I have to decide on the record I have. But which of  
11 those two scenarios do you argue or do you argue for them both?  
12 We'll take the second. We'd rather, no assumption, no  
13 confirmation, but if we don't get that, then going to page 18  
14 or 22 of your memo of law, well then we have an alternative.

15 MR. GOLDSTEIN: Your Honor, let me respond by saying  
16 I can give you the alternative arguments. I can't give you a  
17 definitive position because I don't have authority to tell you  
18 definitively. However, if Your Honor concludes that the TUAs  
19 can't be assumed, whether liquidation will follow or whether  
20 there will be some other alternative, I don't know but clearly  
21 one of the things we have said is that you can't assume the  
22 TUAs without providing us the relief set forth in paragraph 22.

23 The element of the paragraph 22 relief that I believe  
24 navigates the waters, Your Honor, and doesn't necessarily  
25 require resolicitation is that you agree that assumption

1 requires under paragraph 4, payment of the Hartsdale vendors  
2 because if they're paid, any issues with respect to disclosure,  
3 any issues with respect to liquidation analysis, any issues  
4 with respect to the process are really mooted.

5 I think Your Honor if you reach the result that these  
6 can be assumed but you agree with me that the vendors have to  
7 be paid, the debtor complies with its reporting requirements,  
8 the debtor complies with the confidentiality requirements, you  
9 can get there. Now --

10 THE COURT: Going forward, I don't think there is any  
11 dispute that the TUAs will be in effect as written and the  
12 debtor will be obligated to comply with it. And fortunately or  
13 unfortunately, if there is a subsequent dispute in a year or  
14 two, I don't believe I will be the party required to resolve  
15 that dispute. Hopefully there won't be a dispute.

16 It appears that the company -- the two companies got  
17 along very well for many years without much of a glitch and  
18 indeed, both parties seem to have benefitted enormously from  
19 the relationship. You've impressed on me time and time again  
20 that this has been a very beneficial contract, group of  
21 contracts for these debtors and I have to assume that Ashley  
22 has gotten paid and paid in full. I don't believe that Ashley  
23 was behind. The debtors were not behind on Ashley on the day  
24 of the filing or not far behind, at least I have been told  
25 that. And presumably, you made this point over and over

1 again, the Ashley relationship is a valuable one and one that  
2 these debtors should give up no matter what they do.

3 Another alternative of course would be for me to say  
4 kill the Jennifer side of the business and continue with  
5 Ashley. That seems to be sometimes what you're arguing for.

6 MR. GOLDSTEIN: No, I am not arguing that, Your  
7 Honor. We're arguing that the Ashley side is subsidizing the  
8 Jennifer side and that you have to take that in account when  
9 you think about adequate assurance, which I think -- and I  
10 think Your Honor appreciates that.

11 THE COURT: All right.

12 MR. GOLDSTEIN: But, Your Honor, I am not -- I want  
13 to be clear because I am trying to be cognizant of the Court's  
14 comments. Because it is an important business and we're not  
15 saying it's not important business, what's part of that  
16 important business is the vendors and getting back to the  
17 brand, the goodwill, the trademark. It's a very perhaps  
18 nuanced comment but it's one that I think we tried to make and  
19 make convincingly, I think under the documents but as well as  
20 try and bring them into the fold.

21 That is a significant piece, we think, of cure. And  
22 if you reach that decision on cure, then they have to make some  
23 additional payments. They'll comply with the obligation. And  
24 we'll see what happens, Your Honor. If you don't reach that  
25 conclusion, then I think you have -- the issues of disclosure

1       become more paramount in terms of how you think about how those  
2       creditors were treated in this process and the issues of de  
3       facto substantive consolidation and the liquidation and  
4       disclosure and what not.

5               THE COURT: All right. I think I understand what  
6       your position is.

7               MR. GOLDSTEIN: I hope I --

8               THE COURT: At least you've given me as much as you  
9       are authorized to state today. Thank you.

10              MR. GOLDSTEIN: Thank you very much, Your Honor.

11              MR. FOX: I just have one further point of  
12       clarification because Ashley is a fiduciary to Ashley. I  
13       understand that. We negotiated with a committee that was  
14       composed of not just Jennifer Convertible creditors but Ashley  
15       creditors -- Hartsdale creditors.

16              There's no evidence before Your Honor that any one of  
17       these Ashley paragraph 4 creditors are all unhappy; quite to  
18       the contrary during the time I sat there. Aside from the  
19       landlords, who will argue that they're going to get future rent  
20       but one of them is represented here, those are the top  
21       creditors. Every one of our leased locations with Ashley has  
22       entered into a lease modification agreement. There's also a  
23       rather -- there was a large creditor debt owed to GMM which is  
24       -- I mean is now based on the settlement, is additional rent.  
25       So that's another one.



1 But the three creditors that did vote -- I stand  
2 corrected, I thought it was four, so maybe my math -- I can  
3 recognize all the corporate names, Your Honor. I am only going  
4 by the claims -- the ballot and the sofas but the three largest  
5 ones that were on there, aside from landlords, Valspar voted  
6 for the plan.

7 Now why he -- why Mr. Goldstein reads that they voted  
8 for a different plan, I don't know. If they really were  
9 unsure, maybe they wouldn't have voted. They voted. Sealy  
10 voted for the plan. Left Bank voted for the plan. And let me  
11 tell you, Judge, when I was down to Left Bank, they wrote a  
12 thousand dollars. So now when you go through these sofas and  
13 you're asking us to resolicit if that would be something that  
14 would go to find out whether those creditors, other than those,  
15 need to -- didn't understand it, I just think they weren't owed  
16 a lot of money. You know, basically they are -- it's all  
17 relative in life but they're owed -- most of those creditors  
18 are owed four or five thousand dollars. They probably didn't  
19 know what to do when they got a disclosure statement of the  
20 plan.

21 THE COURT: We're speculating.

22 MR. FOX: Okay.

23 THE COURT: I have a record.

24 MR. FOX: Okay.

25 THE COURT: And does anybody else wish to be heard?

1 MR. CARR: Yes, Your Honor, just two quick points.

2 THE COURT: Excuse me.

3 MR. CARR: I suspect I'm one of the cheerleaders that  
4 Mr. Goldstein was referring to. In any event, Mr. Goldstein  
5 today makes a real big issue about Ashley's name, Ashley's  
6 marks, Ashley's reputation. It talks about the record that was  
7 made at today's hearing, the need to protect those intellectual  
8 property rights.

9 But what's also part of the record, Your Honor, is  
10 not -- is one thing that was not done in this case and that is  
11 Your Honor has never once filed a motion to vacate the  
12 automatic stay to allow it to protect its rights because of  
13 various defaults that the debtors had in connection with the  
14 TUA. Specifically, not paying -- for example, not paying its  
15 other customers or vendors in the ordinary course of business.

16 So if those marks were of paramount importance to  
17 Ashley, I submit Your Honor would have seen a motion to vacate  
18 the automatic stay to allow Ashley to terminate those  
19 agreements.

20 THE COURT: Well --

21 MR. CARR: It didn't happen.

22 THE COURT: We're speculating.

23 MR. CARR: You know, I just think what we're hearing  
24 today is a little bit different than reality.

25 The second point is, again I'm going to go back to

1 paragraph 4 of the TUA. An interpretation of that paragraph  
2 consistent with what Mr. Goldstein wants turns everything  
3 upside down. There are landlords of the Hartsdale entity that  
4 agreed, for example, to waive claims and to give rent  
5 reduction. In fact, Your Honor approved those agreements  
6 earlier today.

7 The absurdity of the argument is that the debtor  
8 can't accept those. The debtor has to go back to the landlords  
9 and say to the landlords, no, we're compelled to pay you in  
10 full and we don't need any rent relief because we're not  
11 allowed to because we're going to be in violation of paragraph  
12 4 of the TUA. That's just another -- just think of that from a  
13 logical perspective. Thank you.

14 THE COURT: All right. I will think of it from a  
15 perspective of interpreting a contract and making sense of all  
16 the terms of a contract but that's what judges do all the time.  
17 Anyone else?

18 MR. FOX: Your Honor, I just misstated. When I  
19 discussed three creditors, it was three non-landlord creditors  
20 because there were lots of creditor landlords that did vote for  
21 the plan.

22 THE COURT: Yes.

23 MR. FOX: So I'd have to stand corrected. I was  
24 giving you -- I didn't even think of the argument Mr. Carr  
25 made. I was giving you three more vanilla creditors.

1 THE COURT: I was assuming that.

2 MR. FOX: Okay.

3 THE COURT: You have separate deals, you've told me  
4 with the landlords, of Hartsdale, as well as with most of the  
5 other landlords, at least those where you're assuming.

6 MR. FOX: Right.

7 THE COURT: Or most of them. Anyone else?

8 (No response)

9 THE COURT: All right. I will not attempt to issue a  
10 decision tonight. I will issue a decision as soon as I can,  
11 either in writing or if it's oral, I will have a telephonic  
12 conference and you'll read my decision into the record.

13 At that time, if the decision is to confirm the plan  
14 and to assume the contracts, I may or may not have some  
15 colloquy over the form of the confirmation order. Frankly, I  
16 think the form of the order is generally far better than many  
17 I've seen recently. And one of the main questions though is  
18 the -- some of the release language, not all of it but perhaps  
19 a little of the language that the debtors have inserted. But  
20 we can look at it and when I'm speaking of release, I'm not  
21 speaking of the debtors' release, I'm speaking of the third-  
22 party release. But that's for -- perhaps that's -- I'm getting  
23 ahead of myself.

24 I appreciate very much the efforts of all parties and  
25 the professional presentations today. And I will try to get

1 out a decision as soon as I possibly can. I realize this case  
2 has been on a fast track and I'm assuming that you want to  
3 confirm -- you want to go effective if you can as soon as you  
4 can. And that's everyone's desire, at least to know where you  
5 stand. It may not be everyone's desire to confirm but that  
6 certainly everyone would want to know where they stand, as soon  
7 as possible.

8 MR. FOX: In particular, a lot of the landlords are  
9 probably are expecting to get their cure payments that we  
10 haven't made and certain other perspective payments that we've  
11 made.

12 THE COURT: Well, you're making the cure payments on  
13 the effective date.

14 MR. FOX: Yes.

15 THE COURT: And when would you -- I don't know that  
16 you've ever stated when you would -- if I confirm the plan  
17 today, when you would hope to go effective.

18 MR. FOX: February 8.

19 THE COURT: February 1?

20 MR. FOX: 8th.

21 THE COURT: February 8.

22 MR. FOX: Well, no, later than February 8. It  
23 depends on whether Mengnu was going to want to wait the  
24 fourteen days. We're ready to -- I think that everybody's  
25 ready to go effective sooner than that but I wouldn't want to

1 put, I think it was --

2 MR. NEIGER: February 8, Your Honor.

3 THE COURT: February 8. Well it may -- there  
4 obviously is going to be some delay in terms of entry of a  
5 confirmation order because we're not going to enter a  
6 confirmation order tonight. That I can assure the parties.

7 I do want to look at the arguments. There are a few  
8 issues that I think I should look at more closely before I  
9 issue a decision.

10 Anything else tonight?

11 MS. NADRITCH: Just one housekeeping matter, Your  
12 Honor.

13 THE COURT: Yes.

14 MS. NADRITCH: Earlier this morning, you approved  
15 three motions; if I may submit those orders.

16 THE COURT: Yes, please do.

17 MS. NADRITCH: Thank you very much.

18 THE COURT: Please do.

19 MS. NADRITCH: Thank you.

20 THE COURT: And again, I thank the parties for very  
21 professional presentations.

22 IN UNISON: Thank you, Your Honor.

23 (Whereupon these proceedings were concluded at 6:40 p.m.)  
24  
25

## I N D E X

## T E S T I M O N Y

WITNESS	ATTORNEY	PAGE
Rami Abada	Mr. Goldstein	76, 159
Rami Abada	Mr. Fleming	149
Rami Abada	Mr. Carr	151
Rami Abada	Mr. Neiger	158
Robert Grien	Mr. Goldstein	163
L. Thomas Sperry	Mr. Neiger	185
L. Thomas Sperry	Mr. Goldstein	190

## E X H I B I T S

DEBTORS'	EVID
A - Certificate of good standing	146
B - Certification of Incorporation	147
C - Carle Place TUA	148
D, E, F, G, H, I	148
J - Financial statement Hartsdale provided to Ashley in December 2009	148

## I N D E X

(continued)

## E X H I B I T S

ASHLEY'S EVID

4 - Hartsdale scheduled assets 198

and liabilities pleading

7 - Amended DIP budget dated 11/24/10 199

9 - August 17 letter from Mr. Schultz 200

to Mr. Fox

14, 15, 17 - Monthly operating report 200

and disclosure statement

22 - 2009 balance sheet pages AH-001 to AH-005 201

29 - TUA with respect to Carle Place 201

30 - Second amended secured exit credit 203

agreement 1185035-1

## R U L I N G S

DESCRIPTION PAGE LINES

Settlement approved subject to the additional 13 21-24  
notice

Claims expunged and adjusted as requested 15 8-10

subject to a clarification with regard

to the claim of 376 Boylston Street Realty.



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23  
24  
25

I N D E X

(continued)

R U L I N G S

DESCRIPTION	PAGE	LINES
Motion for approval to assume leases approved	20	15
Motion to strike Grien declaration overruled	65	1-2

C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Esther  
Accardi**

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